

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 188

By: Senator Rapert
By: Representative Lowery

For An Act To Be Entitled

AN ACT TO MODIFY THE FAIR MORTGAGE LENDING ACT; TO AMEND CERTAIN PROVISIONS OF THE FAIR MORTGAGE LENDING ACT TO COMPLY WITH RECENT DEVELOPMENTS IN FEDERAL LAW; AND FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE FAIR MORTGAGE LENDING ACT; AND TO AMEND CERTAIN PROVISIONS OF THE FAIR MORTGAGE LENDING ACT TO COMPLY WITH RECENT DEVELOPMENTS IN FEDERAL LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 23-39-502(1), concerning the definition of "applicant" under the Fair Mortgage Lending Act, is amended to read as follows:

(1) "Applicant" means a person ~~who~~ that has applied to become licensed under this subchapter as a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer;

SECTION 2. Arkansas Code § 23-39-502(3), concerning the definition of "branch office" under the Fair Mortgage Lending Act, is amended to read as follows:

(3) "Branch office" means a location that is separate and distinct from the licensee's principal place of business and includes a net branch or any location from which business is conducted under the license or



in the name of the mortgage broker, mortgage banker, or mortgage servicer:

(A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;

(B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued; or

(C) Which, due to the actions of any employee, associate, ~~or~~ loan officer, or transitional loan officer of the licensee, may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;

SECTION 3. Arkansas Code § 23-39-502(5)(B), concerning the definition of "control" under the Fair Mortgage Lending Act, is amended to read as follows:

(B) A person is presumed to control a company if the person:

(i) Is a director, general partner, or executive officer of the company;

(ii) Directly or indirectly has the right to vote ~~ten percent (10%)~~ twenty-five percent (25%) or more of a class of a voting security of the company or has the power to sell or direct the sale of ~~ten percent (10%)~~ twenty-five percent (25%) or more of a class of voting securities of the company;

(iii) In the case of a limited liability company, is a managing member of the limited liability company; or

(iv) In the case of a partnership, has the right to receive upon dissolution or has contributed ten percent (10%) or more of the capital of the partnership;

SECTION 4. Arkansas Code § 23-39-502(9)(A), concerning the definition of "exempt person" under the Fair Mortgage Lending Act, is amended to read as follows:

(9)(A) "Exempt person" means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer under this subchapter.

SECTION 5. Arkansas Code § 23-39-502(9)(B)(xvi), concerning the definition of "exempt person" under the Fair Mortgage Lending Act, is amended to read as follows:

~~(xvi) A manufactured home retailer and its employees if performing only administrative or clerical tasks in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage banker or a mortgage broker for the performance of the administrative or clerical tasks~~
A manufactured or modular home retailer and its employees if:

(a) The manufactured or modular home retailer or its employees perform only administrative or clerical tasks on behalf of a person required to be licensed under this subchapter; or

(b) The manufactured or modular home retailer and its employees:

(1) Do not receive compensation or financial gain for engaging in loan officer activities that exceeds the amount of compensation or financial gain that could be received in a comparable cash transaction for a manufactured home;

(2) Disclose to the consumer in writing any corporate affiliation with a mortgage banker;

(3) Provide referral information for at least one (1) unaffiliated creditor if the manufactured or modular home retailer has a corporate affiliation with a mortgage banker and the mortgage banker offers a recommendation; and

(4)(A) Do not directly negotiate loan terms with the consumer or lender.

(B) As used in subdivision (9)(B)(xvi)(b)(4)(A) of this section, "loan terms" includes rates, fees, and other costs;

SECTION 6. Arkansas Code § 23-39-502(10), concerning the definition of "licensee" under the Fair Mortgage Lending Act, is amended to read as

follows:

(10) "Licensee" means a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer ~~who~~ that is licensed under this subchapter;

SECTION 7. Arkansas Code § 23-39-502(13), concerning the definition of "managing principal" under the Fair Mortgage Lending Act, is amended to read as follows:

(13) "Managing principal" means a person who meets the requirements of ~~§ 23-39-505~~ § 23-39-508 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer;

SECTION 8. Arkansas Code § 23-39-502, concerning definitions used under the Fair Mortgage Lending Act, is amended to add additional subdivisions to read as follows:

(23) "Transitional loan officer" means an individual who, in exchange for compensation as an employee of, or who otherwise receives compensation or remuneration from, a mortgage broker or a mortgage banker, is authorized to act as a loan officer subject to a transitional loan officer license;

(24) "Transitional loan officer license" means a license that:

(A) Is issued to an individual who is employed by a mortgage banker or mortgage broker licensed under this subchapter;

(B) Is limited to a term of no more than one hundred twenty (120) days; and

(C) Is not subject to reapplication, renewal, or extension by the commissioner.

SECTION 9. Arkansas Code § 23-39-503 is amended to read as follows:
23-39-503. License required – Licensee records.

(a) It is unlawful for any person located in Arkansas other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, transitional loan officer, or mortgage servicer without first obtaining a license from the Securities Commissioner under this subchapter.

(b) It is unlawful for any person other than an exempt person to act or attempt to act, directly or indirectly, as a mortgage broker, mortgage banker, loan officer, transitional loan officer, or mortgage servicer with any person located in Arkansas without first obtaining a license from the commissioner under this subchapter.

(c) It is unlawful for any person other than an exempt person to employ, to compensate, or to appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer or a transitional loan officer under this subchapter.

(d)(1)(A) ~~The license of a loan officer shall terminate when his or her~~ terminates when the loan officer's employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.

(B) A transitional loan officer license terminates when the transitional loan officer's employment by or relationship with a mortgage broker or mortgage banker licensed under this subchapter terminates.

(2) When a loan officer or a transitional loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this subchapter or ceases to act as a loan officer or as a transitional loan officer, the mortgage broker or mortgage banker with which the person was affiliated or by which that person ~~is~~ was employed shall notify the commissioner in writing within thirty (30) days from the date on which the loan officer or the transitional loan officer ceased to be employed or ceased activities as a loan officer or as a transitional loan officer.

(3)(A) A licensee that does not comply with subdivision (d)(2) of this section shall pay a late fee of two hundred fifty dollars (\$250) for failure to timely notify the commissioner.

(B) The late fee may be waived, in whole or in part, ~~in~~ at the sole discretion of the commissioner and for good cause shown.

(4) A loan officer or a transitional loan officer shall not be employed simultaneously by more than one (1) mortgage broker or mortgage banker licensed under this subchapter.

(e) Each mortgage broker and mortgage banker licensed under this subchapter shall maintain a list of all loan officers and all transitional loan officers employed by the mortgage broker or mortgage banker and who engage or attempt to engage in business with any person in Arkansas.

(f) No person other than an exempt person shall hold himself or

herself out as a mortgage banker, mortgage broker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer unless the person is licensed in accordance with this subchapter.

SECTION 10. Arkansas Code § 23-39-504(4), concerning rules issued by the Securities Commissioner under the Fair Mortgage Lending Act, is amended to read as follows:

(4) Instruct mortgage brokers, mortgage bankers, mortgage servicers, ~~and~~ loan officers, and transitional loan officers in interpreting this subchapter.

SECTION 11. Arkansas Code § 23-39-505(a)(1), concerning the issuance of a license under the Fair Mortgage Lending Act, is amended to read as follows:

(a)(1) A person desiring to obtain a license as a loan officer, transitional loan officer, mortgage banker, mortgage broker, or mortgage servicer shall make written application for licensure to the Securities Commissioner in the form prescribed by the commissioner.

SECTION 12. Arkansas Code § 23-39-505(a)(2), concerning the authority of the Securities Commissioner to issue a limited license under the Fair Mortgage Lending Act, is amended to read as follows:

(2) The commissioner may approve by rule or order a limited license with limitations, qualifications, or conditions.

SECTION 13. Arkansas Code § 23-39-505(a)(4)(B), concerning the information required by an applicant for a license under the Fair Mortgage Lending Act, is amended to read as follows:

(B) The applicant's form of business and place of organization, including without limitation:

(i) A ~~certified~~ copy of the applicant's organizational and governance documents; and

(ii) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

SECTION 14. Arkansas Code § 23-39-505(g), concerning the audited

financial statements required by a mortgage banker or mortgage servicer under the Fair Mortgage Lending Act, is amended to read as follows:

(g) ~~Each~~ An applicant filing for licensure as a mortgage banker or mortgage servicer shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars (\$25,000) and are:

- (1) Prepared by an independent certified public accountant;
- (2) Prepared ~~in accordance with~~ according to:

~~(A) generally~~ Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or
(B) International financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;

- (3) Accompanied by an opinion acceptable to the commissioner;

and

(4) Dated within fifteen (15) months preceding the date on which the application is filed.

SECTION 15. Arkansas Code § 23-39-505(j), concerning the expiration of a license, is amended to add an additional subdivision to read as follows:

(4) Terminated if the temporary authority granted to a transitional loan officer has expired due to:

- (A) The end of a one hundred twenty (120) day period; or
- (B) The individual receiving a loan officer license under

this subchapter.

SECTION 16. Arkansas Code § 23-39-505(1)(2)(D), concerning certification of continued compliance by a control person under the Fair Mortgage Lending Act, is repealed.

~~(D) Certify that the licensee shall continue to meet the qualifications under this section.~~

SECTION 17. Arkansas Code § 23-39-505(o)(1)(B), concerning the qualifications for a loan officer license under the Fair Mortgage Lending Act, is repealed.

~~(B) Not been found guilty of or pleaded guilty or nolo~~

~~contendere to any offense described in § 23-39-514(a)(2)(C);~~

SECTION 18. Arkansas Code § 23-39-506(c)(2), concerning the renewal of a loan officer license under the Fair Mortgage Lending Act, is amended to read as follows:

(2) ~~Certify that the applicant has complied~~ Comply with the continuing education requirements as required by rules promulgated by the commissioner; and

SECTION 19. Arkansas Code § 23-39-511(b), concerning a roster of names and places of business of all licensees under the Fair Mortgage Lending Act, is amended to read as follows:

(b)(1) The commissioner shall keep a current roster showing the names and places of business of all licensees that shows their respective loan officers and their respective transitional loan officers.

(2) The roster under subdivision (b)(1) of this section shall:

- (A) Be kept on file in the office of the commissioner;
- (B) Contain information regarding all orders or other actions taken against the licensees, ~~loan officers~~, and other persons; and
- (C) Be open to public inspection.

SECTION 20. Arkansas Code § 23-39-512(b)(3), concerning unwarranted invasion of personal privacy and disclosure under the Fair Mortgage Lending Act, is amended to read as follows:

(3) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, including:

(A) Information concerning all employees of the State Securities Department and information concerning persons subject to regulation by the department; and

(B) Personal information about employees of mortgage brokers, mortgage bankers, mortgage servicers, ~~or~~ or transitional loan officers reported to the commissioner under the department's rules concerning registration of those persons;

SECTION 21. Arkansas Code § 23-39-512(b)(6), concerning financial

records obtained during an examination of the licensee under the Fair Mortgage Lending Act, is amended to read as follows:

(6)(A) Financial records of mortgage bankers, mortgage brokers, mortgage servicers, ~~or~~ loan officers, or transitional loan officers, obtained during or as a result of an examination by the department.

(B) However, when a record under this subchapter is required to be filed with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, shall be public information unless sections of the information are bound separately and are marked "confidential" by the mortgage banker, mortgage broker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer upon its submission.

(C) Information under subdivision (6)(B) of this section bound separately and marked "confidential" shall be considered nonpublic until ten (10) days after the commissioner has given the mortgage banker, mortgage broker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer notice that an order will be entered declaring the material public.

(D) If the mortgage banker, mortgage broker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer believes the commissioner's order is incorrect, the mortgage banker, mortgage broker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer may seek an injunction from the Pulaski County Circuit Court ordering the department to hold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner is appealed under applicable law;

SECTION 22. Arkansas Code § 23-39-513(3), concerning prohibited activities under the Fair Mortgage Lending Act, is amended to read as follows:

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, that the mortgage banker, mortgage broker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer is not entitled to retain;

SECTION 23. Arkansas Code § 23-39-513(14), concerning prohibited

activities under the Fair Mortgage Lending Act, is amended to read as follows:

(14) To unreasonably fail to supervise the branches, loan officers, transitional loan officers, and employees of the mortgage broker, mortgage banker, or mortgage servicer;

SECTION 24. Arkansas Code § 23-39-514(a)(2), concerning the disciplinary authority of the Securities Commissioner under the Fair Mortgage Lending Act, is amended to read as follows:

(2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, transitional loan officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:

(A) Has filed an application for a license that as of its effective date or as of any date after filing contained any omission or statement that in light of the circumstances under which it was made is false or misleading with respect to any material fact;

(B) Has violated or failed to comply with any provision of this subchapter, any rule adopted by the commissioner, or any order of the commissioner issued under this subchapter or under Acts 1977, No. 806;

(C) Has pleaded guilty or nolo contendere to or has been found guilty in a domestic, foreign, or military court of:

(i) A felony;

(ii) An offense involving breach of trust, moral turpitude, money laundering, or fraudulent or dishonest dealing within the past ten (10) years; or

(iii) An offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the insurance industry, or any other activity pertaining to financial services;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;

(E) Is the subject of an order of the commissioner:

(i) Denying, suspending, revoking, restricting, or limiting that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, transitional loan officer, securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or

(ii) Directing that person to cease and desist from an activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806;

(F) Is the subject of an order, including a denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including without limitation the mortgage industry;

(G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest or made or brokered any mortgage loan with terms or conditions or in a manner contrary to Arkansas Constitution, Amendment 60;

(H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;

(I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer ~~who~~ that has been subject to an order or injunction described in subdivisions (a)(2)(D)-(G) of this section; or

(J)(i) Has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter.

(ii) The commissioner may enter a denial order against a person under this subsection when the person has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter, but the commissioner shall vacate the order when all fees have been paid.

SECTION 25. Arkansas Code § 23-39-514(b)(2), concerning the civil penalty imposed by the Securities Commissioner under the Fair Mortgage Lending Act, is amended to read as follows:

(2) The civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation under subdivision (b)(1) of this section by a

mortgage broker, mortgage banker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer.

SECTION 26. Arkansas Code § 23-39-514(d), concerning the authority of the Securities Commissioner to cancel a license or application under the Fair Mortgage Lending Act, is amended to read as follows:

(d) The commissioner by summary order may cancel a license or application if the commissioner finds that a licensee or applicant for a license:

- (1) Is no longer in existence;
- (2) Has ceased to do business as a loan officer, transitional loan officer, mortgage broker, mortgage banker, or mortgage servicer;
- (3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or
- (4) Cannot be located after a reasonable search.

SECTION 27. Arkansas Code § 23-39-514(j), concerning disciplinary authority of the Securities Commissioner under the Fair Mortgage Lending Act, is amended to read as follows:

(j) If the commissioner finds that the managing principal, branch manager, ~~or~~ loan officer, or transitional loan officer of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager, ~~or~~ loan officer, or transitional loan officer from serving as a managing principal, branch manager, ~~or~~ loan officer, or transitional loan officer for any period of time the commissioner deems appropriate.

SECTION 28. Arkansas Code § 23-39-518(e)(1), concerning criminal background investigations of licensees under the Fair Mortgage Lending Act, is amended to read as follows:

(e)(1) If the State of Arkansas joins a multistate automated licensing system for mortgage industry participants pursuant to this section, the commissioner may require a criminal background investigation of each applicant seeking to become licensed under this subchapter as a mortgage

broker, mortgage banker, mortgage servicer, ~~or~~ loan officer, or transitional loan officer.