

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

SENATE BILL 188

5 By: Senator Rapert
6 By: Representative Lowery
7

For An Act To Be Entitled

9 AN ACT TO MODIFY THE FAIR MORTGAGE LENDING ACT; TO
10 AMEND CERTAIN PROVISIONS OF THE FAIR MORTGAGE LENDING
11 ACT TO COMPLY WITH RECENT DEVELOPMENTS IN FEDERAL
12 LAW; AND FOR OTHER PURPOSES.
13

Subtitle

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15
16 TO MODIFY THE FAIR MORTGAGE LENDING ACT;
17 AND TO AMEND CERTAIN PROVISIONS OF THE
18 FAIR MORTGAGE LENDING ACT TO COMPLY WITH
19 RECENT DEVELOPMENTS IN FEDERAL LAW.
20

21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

27 (1) "Applicant" means a person ~~who~~ that has applied to become
28 licensed under this subchapter as a loan officer, transitional loan officer,
29 mortgage broker, mortgage banker, or mortgage servicer;
30

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

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



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

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

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

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

15
16 SECTION 3. Arkansas Code § 23-39-502(5)(B), concerning the definition
17 of "control" under the Fair Mortgage Lending Act, is amended to read as
18 follows:

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

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

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

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

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

33
34 SECTION 4. Arkansas Code § 23-39-502(9)(A), concerning the definition
35 of "exempt person" under the Fair Mortgage Lending Act, is amended to read as
36 follows:

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

4
5 SECTION 5. Arkansas Code § 23-39-502(9)(B)(xvi), concerning the
6 definition of "exempt person" under the Fair Mortgage Lending Act, is amended
7 to read as follows:

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

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

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

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

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

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

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

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

34
35 SECTION 6. Arkansas Code § 23-39-502(10), concerning the definition of
36 "licensee" under the Fair Mortgage Lending Act, is amended to read as

1 follows:

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

5
 6 SECTION 7. Arkansas Code § 23-39-502(13), concerning the definition of
 7 "managing principal" under the Fair Mortgage Lending Act, is amended to read
 8 as follows:

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

13
 14 SECTION 8. Arkansas Code § 23-39-502, concerning definitions used
 15 under the Fair Mortgage Lending Act, is amended to add additional
 16 subdivisions to read as follows:

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

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

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

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

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

29
 30 SECTION 9. Arkansas Code § 23-39-503 is amended to read as follows:
 31 23-39-503. License required – Licensee records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19
 20 SECTION 12. Arkansas Code § 23-39-505(a)(2), concerning the authority
 21 of the Securities Commissioner to issue a limited license under the Fair
 22 Mortgage Lending Act, is amended to read as follows:

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

25
 26 SECTION 13. Arkansas Code § 23-39-505(a)(4)(B), concerning the
 27 information required by an applicant for a license under the Fair Mortgage
 28 Lending Act, is amended to read as follows:

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

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

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

35
 36 SECTION 14. Arkansas Code § 23-39-505(g), concerning the audited

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

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

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

9 (A) generally ~~Generally~~ accepted accounting principles as
 10 promulgated by the Financial Accounting Standards Board; or

11 (B) International financial reporting standards
 12 promulgated by the International Financial Reporting Standards Foundation and
 13 the International Accounting Standards Board;

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

15 and

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

18
 19 SECTION 15. Arkansas Code § 23-39-505(j), concerning the expiration of
 20 a license, is amended to add an additional subdivision to read as follows:

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

23 (A) The end of a one hundred twenty (120) day period; or

24 (B) The individual receiving a loan officer license under
 25 this subchapter.

26
 27 SECTION 16. Arkansas Code § 23-39-505(1)(2)(D), concerning
 28 certification of continued compliance by a control person under the Fair
 29 Mortgage Lending Act, is repealed.

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

32
 33 SECTION 17. Arkansas Code § 23-39-505(o)(1)(B), concerning the
 34 qualifications for a loan officer license under the Fair Mortgage Lending
 35 Act, is repealed.

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

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

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

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

9
10 SECTION 19. Arkansas Code § 23-39-511(b), concerning a roster of names
11 and places of business of all licensees under the Fair Mortgage Lending Act,
12 is amended to read as follows:

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

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

17 (A) Be kept on file in the office of the commissioner;

18 (B) Contain information regarding all orders or other
19 actions taken against the licensees, ~~loan officers~~, and other persons; and

20 (C) Be open to public inspection.

21
22 SECTION 20. Arkansas Code § 23-39-512(b)(3), concerning unwarranted
23 invasion of personal privacy and disclosure under the Fair Mortgage Lending
24 Act, is amended to read as follows:

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

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

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

35
36 SECTION 21. Arkansas Code § 23-39-512(b)(6), concerning financial

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

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

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

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

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

25
26 SECTION 22. Arkansas Code § 23-39-513(3), concerning prohibited
27 activities under the Fair Mortgage Lending Act, is amended to read as
28 follows:

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

35
36 SECTION 23. Arkansas Code § 23-39-513(14), concerning prohibited

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

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

6
 7 SECTION 24. Arkansas Code § 23-39-514(a)(2), concerning the
 8 disciplinary authority of the Securities Commissioner under the Fair Mortgage
 9 Lending Act, is amended to read as follows:

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

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

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

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

24 (i) A felony;

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

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

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

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

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

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

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

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

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

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

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

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

31
 32 SECTION 25. Arkansas Code § 23-39-514(b)(2), concerning the civil
 33 penalty imposed by the Securities Commissioner under the Fair Mortgage
 34 Lending Act, is amended to read as follows:

35 (2) The civil penalty shall not exceed ten thousand dollars
 36 (\$10,000) for each violation under subdivision (b)(1) of this section by a

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

3
 4 SECTION 26. Arkansas Code § 23-39-514(d), concerning the authority of
 5 the Securities Commissioner to cancel a license or application under the Fair
 6 Mortgage Lending Act, is amended to read as follows:

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

10 (1) Is no longer in existence;

11 (2) Has ceased to do business as a loan officer, transitional
 12 loan officer, mortgage broker, mortgage banker, or mortgage servicer;

13 (3) Is subject to an adjudication of mental incompetence or to
 14 the control of a committee, conservator, or guardian; or

15 (4) Cannot be located after a reasonable search.

16
 17 SECTION 27. Arkansas Code § 23-39-514(j), concerning disciplinary
 18 authority of the Securities Commissioner under the Fair Mortgage Lending Act,
 19 is amended to read as follows:

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

29
 30 SECTION 28. Arkansas Code § 23-39-518(e)(1), concerning criminal
 31 background investigations of licensees under the Fair Mortgage Lending Act,
 32 is amended to read as follows:

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

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

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APPROVED: 2/26/19