

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

**Act 731 of the Regular Session**

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

*As Engrossed: H3/19/09*

**A Bill**

HOUSE BILL 1881

5 By: Representative Wells  
6 By: Senator Horn  
7  
8

**For An Act To Be Entitled**

10 AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT, §  
11 23-39-501 ET SEQ.; TO REVISE BONDING, REPORTING,  
12 RECORDS, PROHIBITED ACTIVITIES, PENALTIES, AND  
13 OTHER PROVISIONS OF THE FAIR MORTGAGE LENDING  
14 ACT, § 23-39-501 ET SEQ.; AND FOR OTHER PURPOSES.  
15

**Subtitle**

16 TO AMEND THE FAIR MORTGAGE LENDING ACT,  
17 § 23-39-501 ET SEQ.; TO REVISE BONDING,  
18 REPORTING, RECORDS, PROHIBITED  
19 ACTIVITIES, PENALTIES, AND OTHER  
20 PROVISIONS OF THE ACT.  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 23-39-502(9), concerning the definition of  
27 “exempt person” under the Fair Mortgage Lending Act, is amended to read as  
28 follows:

29 (9)(A) “Exempt person” means a person not required to be  
30 licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan  
31 officer under this subchapter.

32 (B) “Exempt person” includes any of the following:

33 (i) An employee of a licensee whose responsibilities  
34 are limited to clerical and administrative tasks for his or her employer and  
35 who does not solicit borrowers, accept applications, or negotiate the terms



1 of loans on behalf of the employer;

2 (ii) An agency or corporate instrumentality of the  
3 federal government or any state, county, or municipal government granting  
4 mortgage loans under specific authority of the laws of any state or of the  
5 United States;

6 (iii) A trust company or industrial loan company  
7 chartered under the laws of Arkansas;

8 ~~(iv) An insurance company licensed or authorized to~~  
9 ~~conduct business by the State Insurance Department;~~

10 ~~(v)~~(iv) A small-business investment corporation  
11 licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et  
12 seq., as it existed on January 1, 2009;

13 ~~(vi)~~(v) A real estate investment trust as defined in  
14 26 U.S.C. § 856, as it existed on January 1, 2009;

15 ~~(vii)~~(vi) A state or federally chartered bank,  
16 savings bank, savings and loan association, or credit union, the accounts of  
17 which are insured by the Federal Deposit Insurance Corporation or the  
18 National Credit Union Administration or any of their operating subsidiaries;

19 ~~(viii)~~(vii) An agricultural loan organization that  
20 is subject to licensing, supervision, or auditing by the ~~United States~~  
21 ~~Agricultural Stabilization and Conservation Service~~ Farm Service Agency,  
22 Commodity Credit Corporation, ~~Rural Housing Administration~~ Rural Development  
23 Housing & Community Facilities Programs, Farm Credit Administration, or the  
24 United States Department of Agriculture;

25 ~~(ix)~~(viii) A nonprofit corporation that:

26 (a) Qualifies as a nonprofit entity under §  
27 501(c)(3) of the Internal Revenue Code;

28 (b) Is not primarily in the business of  
29 soliciting or brokering mortgage loans; and

30 (c) Makes or services mortgage loans to  
31 promote home ownership or home improvements for the disadvantaged;

32 ~~(x)~~(a)(ix)(a) A licensed real estate agent or broker  
33 who is performing those activities subject to the regulation of the Arkansas  
34 Real Estate Commission.

35 (b) Notwithstanding subdivision (9)(B)~~(x)~~(a)  
36 (ix)(a) of this section, "exempt person" does not include a real estate agent

1 or broker who receives compensation of any kind in connection with the  
2 referral, placement, or origination of a mortgage loan;

3 ~~(xi)~~(x) A person who engages in seller-financed  
4 transactions, or who as a seller of real property receives mortgages, deeds  
5 of trust, or other security instruments on real estate as security for a  
6 purchase money obligation, if:

7 (a) The person does not receive from or hold  
8 on behalf of the borrower any funds for the payment of insurance or taxes on  
9 the real property; and

10 (b) The seller does not sell the liens or  
11 mortgages in the secondary market other than to affiliated or subsidiary  
12 persons;

13 ~~(xii)~~(xi) An individual or husband and wife who  
14 provide funds for investment in loans secured by a lien on real property on  
15 his or her or their own account and who do not:

16 (a) Charge a fee or cause a fee to be paid for  
17 any service other than the normal and scheduled rates for escrow, title  
18 insurance, and recording services; and

19 (b) Collect funds to be used for the payment  
20 of any taxes or insurance premiums on the property securing the loans;

21 ~~(xiii)~~(xii) An attorney at law rendering services in  
22 the performance of his or her duties as an attorney at law;

23 ~~(xiv)~~ A person doing business under the laws of  
24 Arkansas or the United States relating to any broker-dealer, agent,  
25 investment adviser, or investment adviser representative registered with the  
26 State Securities Department;

27 ~~(xv)~~(xiii) A person performing any act under order  
28 of any court;

29 ~~(xvi)~~(xiv) A person acting as a mortgage broker,  
30 mortgage banker, or mortgage servicer for any person located in Arkansas, if  
31 the mortgage broker, mortgage banker, or mortgage servicer has no office or  
32 employee in Arkansas and the real property that is the subject of the  
33 mortgage is located outside of Arkansas;

34 ~~(xvii)~~ A person who brokers, makes, or services  
35 mortgage loans if the only mortgage loans that the person brokers, makes, or  
36 services in Arkansas are nonresidential mortgage loans;

1                   ~~(xviii)~~(xv) An officer or employee of an exempt  
2 person described in subdivisions (9)(B)~~(ii)~~~~(xvi)~~ (ii)-(xiv) of this section  
3 if acting in the scope of employment for the exempt person; and

4                   ~~(xix)~~(xvi) A manufactured home retailer and its  
5 employees if performing only administrative or clerical tasks in connection  
6 with the sale or lease of a manufactured home and the manufactured home  
7 retailer and its employees receive no compensation or other gain from a  
8 mortgage banker or a mortgage broker for the performance of the  
9 administrative or clerical tasks;

10  
11           SECTION 2. Arkansas Code § 23-39-502(11), concerning the definition of  
12 “loan officer” under the Fair Mortgage Lending Act, is amended to read as  
13 follows:

14                   (11)(A) “Loan officer” means an individual other than an exempt  
15 person described in subdivision (9) of this section who in exchange for  
16 compensation as an employee of or who otherwise receives compensation or  
17 remuneration from a mortgage broker or a mortgage banker ~~licensed under this~~  
18 ~~subchapter:~~

19                                   (i) Solicits or offers to solicit an application for  
20 a mortgage loan;

21                                   (ii) Accepts or offers to accept an application for  
22 a mortgage loan;

23                                   (iii) Negotiates or offers to negotiate the terms or  
24 conditions of a mortgage loan; or

25                                   (iv) Issues or offers to issue a mortgage loan  
26 commitment or interest rate guarantee agreement.

27                   (B) “Loan officer” does not include:

28                                   (i) ~~an~~ An individual who performs clerical or  
29 administrative tasks in the processing of a mortgage loan at the direction of  
30 and subject to the supervision and instruction of a licensed loan officer; ~~or~~

31                                   (ii) ~~an~~ An underwriter if the individual performs no  
32 activities under subdivision (11)(A) of this section; or

33                                   (iii) An individual who is solely involved in  
34 extensions of credit relating to timeshare plans, as that term is defined in  
35 11 U.S.C. § 101(53D), as it existed on January 1, 2009;

36

1 SECTION 3. Arkansas Code § 23-39-502(16), concerning the definition of  
2 “mortgage loan” under the Fair Mortgage Lending Act, is amended to read as  
3 follows:

4 (16) “Mortgage loan” means a loan primarily ~~secured by either a~~  
5 ~~mortgage or a deed of trust on real property~~ for personal, family, or  
6 household use that is secured by a mortgage, deed of trust, reverse mortgage,  
7 or other equivalent consensual security interest encumbering:

8 (A) A dwelling as defined in section 103(v) of the Truth  
9 in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2009;  
10 or

11 (B) Residential real estate upon which is constructed or  
12 intended to be constructed a dwelling;

13  
14 SECTION 4. Arkansas Code § 23-39-502(18), concerning the definition of  
15 “nonresidential mortgage loan” under the Fair Mortgage Lending Act, is  
16 repealed.

17 ~~(18) “Nonresidential mortgage loan” means a loan secured by an~~  
18 ~~interest in real property used or to be used for other than one to four-~~  
19 ~~family residential purposes;~~

20  
21 SECTION 5. Arkansas Code § 23-39-502, concerning definitions under the  
22 Fair Mortgage Lending Act, is amended to add additional subdivisions to read  
23 as follows:

24 (22) “Reverse mortgage” means a nonrecourse loan that pays a  
25 homeowner loan proceeds drawn from accumulated home equity; and

26 (23) “Unique identifier” means a number or other identifier  
27 assigned by protocols established by the automated licensing system approved  
28 by the commissioner.

29  
30 SECTION 6. Arkansas Code § 23-39-503(d)(3)(A), concerning the failure  
31 to timely notify the Securities Commissioner when a loan officer ceases to be  
32 employed as a loan officer, is amended to read as follows:

33 (A) ~~Any~~ A licensee that does not comply with subdivision  
34 (d)(2) of this section shall pay a late fee of ten dollars (\$10.00) for each  
35 day that he or she fails to two hundred fifty dollars (\$250) for failure to  
36 timely notify the commissioner as provided in subdivision (d)(2) of this

1 ~~section, not to exceed six hundred dollars (\$600).~~

2  
3 SECTION 7. Arkansas Code § 23-39-505(a)(3)(C), concerning the  
4 application requirements for a loan officer, mortgage banker, mortgage  
5 broker, and mortgage servicer, is amended to read as follows:

6 (C)(i) The applicant's proposed method of and locations  
7 for doing business, if applicable,

8 (ii) The applicant's proposed method of doing  
9 business shall include whether the applicant is proposing to be licensed as a  
10 mortgage broker, mortgage banker, or mortgage servicer;

11  
12 SECTION 8. Arkansas Code § 23-39-505(a)(3)(D)and(E), concerning  
13 application requirements for a loan officer, mortgage banker, mortgage  
14 broker, and mortgage servicer, are amended to read as follows:

15 (D)(i) The qualifications, ~~and~~ business history, and  
16 financial condition of the applicant and any partner, officer, ~~or~~ director,  
17 any person occupying a similar status or performing similar functions, or any  
18 person directly or indirectly controlling the applicant.

19 (ii) The qualifications and business history of  
20 persons under subdivision (a)(3)(D)(i) of this section shall include:

21 (a) A description of any injunction or  
22 administrative order, including any denial to engage in a regulated activity  
23 by any state or federal authority to which the person is, has been, or has  
24 sought to be subject;

25 (b) Any conviction of a misdemeanor involving  
26 fraudulent dealings or moral turpitude or relating to any aspect of the  
27 mortgage industry, the securities industry, the insurance industry, or any  
28 other activity pertaining to financial services; and

29 (c) Any felony convictions; and

30 (E) ~~With respect to:~~

31 ~~(i) An application for licensing as a mortgage~~  
32 ~~banker, mortgage broker, or mortgage servicer, the applicant's financial~~  
33 ~~condition and business history; and~~

34 ~~(ii) The application for licensing as a loan~~  
35 ~~officer, the applicant's business history.~~ A disclosure of any beneficial  
36 interest in an affiliated industry business held by the applicant or by a

1 principal, officer, director, or employee of the applicant.

2  
3 SECTION 9. Arkansas Code § 23-39-505(b), concerning the requirements  
4 for licensure as a loan officer, is amended to add an additional subdivision  
5 to read as follows:

6 (4) Furnish to the commissioner or through an automated  
7 licensing system, information concerning the applicant's identity and  
8 background, including:

9 (A) Fingerprints for submission to the Federal Bureau of  
10 Investigation and any governmental agency or entity authorized to receive  
11 fingerprints for a state, national, and international criminal background  
12 check; and

13 (B) Personal history and experience in a form prescribed  
14 by the automated licensing system and the commissioner, including the  
15 submission of authorization for the automated licensing system and the  
16 commissioner to obtain:

17 (i) An independent credit report from a consumer  
18 reporting agency described in section 603(p) of the Fair Credit Reporting  
19 Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2009; and

20 (ii) Information related to any administrative,  
21 civil, or criminal proceeding by a governmental jurisdiction.

22  
23 SECTION 10. Arkansas Code § 23-39-505(e), concerning application  
24 requirements for a loan officer, mortgage banker, mortgage broker, and  
25 mortgage servicer, is amended to read as follows:

26 ~~(e) Except as provided in § 23-39-517, each~~ Each applicant for initial  
27 licensure shall pay a filing fee of ~~seven hundred fifty dollars (\$750) for~~  
28 ~~licensure as a mortgage broker, mortgage banker, or mortgage servicer or~~  
29 ~~fifty dollars (\$50.00) for licensure as a loan officer.;~~

30 (1) Seven hundred fifty dollars (\$750) for the principal place  
31 of business of a mortgage broker, mortgage banker, or mortgage servicer;

32 (2) One hundred dollars (\$100) for each branch office of a  
33 mortgage broker, mortgage banker, or mortgage servicer; and

34 (3) Fifty dollars (\$50.00) for each loan officer.

35  
36 SECTION 11. Arkansas Code § 23-39-505(f)(1) and (2), concerning surety

1 bonds for mortgage brokers, mortgage bankers, and mortgage servicers, are  
2 amended to read as follows:

3 (f)(1)(A) Each mortgage broker, mortgage banker, and mortgage  
4 servicer shall post a surety bond in the amount of ~~one hundred thousand~~  
5 dollars (\$100,000), and each mortgage broker shall post a surety bond in the  
6 amount of fifty thousand dollars (\$50,000) prescribed by rule or order of the  
7 commissioner.

8 (B) The amount of the surety bond prescribed by the  
9 commissioner under subdivision (f)(1)(A) of this section shall be:

10 (i) Based upon loan activity during the previous  
11 year; and

12 (ii) Not less than one hundred thousand dollars  
13 (\$100,000).

14 (2) The surety bond shall be in the form prescribed by the  
15 commissioner and shall run to the state for the benefit of any claimants  
16 against the licensee and loan officers employed by the licensee to secure the  
17 faithful performance of the obligations of the licensee and loan officers  
18 employed by the licensee under this subchapter.

19

20 SECTION 12. Arkansas Code § 23-39-505(f)(6), concerning a deposit of  
21 cash or securities in lieu of a surety bond, is repealed.

22 ~~(6) Any appropriate deposit of cash or securities shall be~~  
23 ~~accepted in lieu of any bond that is required.~~

24

25 SECTION 13. Arkansas Code § 23-39-505(g), concerning licensing  
26 requirements for a mortgage banker, mortgage servicer, or mortgage broker, is  
27 amended to read as follows:

28 (g)~~(1)~~ Each applicant filing for licensure as a mortgage banker or  
29 mortgage servicer shall file with the commissioner as part of his or her  
30 application audited financial statements that reflect that the applicant has  
31 a net worth of at least twenty-five thousand dollars (\$25,000) and are:

32 ~~(A)(1)~~ Prepared by an independent certified public accountant;

33 ~~(B)(2)~~ Prepared in accordance with generally accepted accounting  
34 ~~principals~~ principles as promulgated by the Financial Accounting Standards  
35 Board;

36 ~~(C)(3)~~ Accompanied by an opinion acceptable to the commissioner;



1 and

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

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

8 ~~(A) Certified as true and correct by the president or~~  
9 ~~chief financial officer of the mortgage broker;~~

10 ~~(B) Prepared in accordance with generally accepted~~  
11 ~~accounting principles as promulgated by the Financial Accounting Standards~~  
12 ~~Board; and~~

13 ~~(C) Dated within eighteen (18) months preceding the date~~  
14 ~~on which the application is filed.~~

15

16 SECTION 14. Arkansas Code § 23-39-505(i), concerning application  
17 requirements for a loan officer, mortgage banker, mortgage broker, and  
18 mortgage servicer, is amended to read as follows:

19 (i)~~(1)~~ Each principal ~~office~~ place of business and  
20 each branch office of a mortgage broker, mortgage banker, or mortgage  
21 servicer licensed under this subchapter shall obtain a separate license.

22 ~~(2) A licensed mortgage broker, mortgage banker, or mortgage~~  
23 ~~servicer shall file with the commissioner an application in the form~~  
24 ~~prescribed by the commissioner that identifies the address of the principal~~  
25 ~~office, each branch office, and each branch manager.~~

26 ~~(3) The commissioner shall assess a filing fee of one hundred~~  
27 ~~dollars (\$100) for each branch office that is issued a license.~~

28

29 SECTION 15. Arkansas Code § 23-39-505(j), concerning application  
30 requirements for a loan officer, mortgage banker, mortgage broker, and  
31 mortgage servicer, is amended to read as follows:

32 (j) Except as set forth in § 23-39-503(d) ~~and § 23-39-517~~, each  
33 license issued by the commissioner under this subchapter ~~shall expire~~ expires  
34 at the close of business on ~~the following dates~~ December 31 of the calendar  
35 year unless the license is:

36 (1) ~~previously~~ Previously surrendered by the licensee and the

1 surrender is accepted by the commissioner;<sup>7</sup>

2 ~~(2) it is abandoned~~ Abandoned by the licensee as provided in §  
3 23-39-506<sup>7</sup>; or

4 ~~(3) it is suspended~~ Suspended or revoked by the commissioner<sup>+</sup>.

5 ~~(1) One hundred eighty (180) days after the end of the~~  
6 ~~licensee's current fiscal year in the case of a mortgage broker, mortgage~~  
7 ~~banker, or mortgage servicer; and~~

8 ~~(2) On the last day of the twelfth month after the date of~~  
9 ~~issuance in the case of a loan officer.~~

10  
11 SECTION 16. Arkansas Code § 23-39-505(1), concerning control of a  
12 licensee, is amended to add an additional subdivision to read as follows:

13 (4)(A) Failure to notify the commissioner at least thirty (30)  
14 days before the proposed change of control shall result in a late fee of one  
15 hundred dollars (\$100).

16 (B) All or part of the late fee may be waived by the  
17 commissioner for good cause.

18  
19 SECTION 17. Arkansas Code § 23-39-505, concerning qualifications for  
20 licensure, is amended to add an additional subsection to read as follows:

21 (o) The commissioner shall not issue a loan officer license unless the  
22 commissioner finds that:

23 (1) The applicant has:

24 (A) Never had a loan officer license revoked in any  
25 governmental jurisdiction;

26 (B) Not been found guilty of or pleaded guilty or nolo  
27 contendere to any offense described in § 23-39-514(a)(2)(C);

28 (C) Demonstrated sufficient financial responsibility,  
29 character, and general fitness to command the confidence of the community and  
30 to warrant a determination that the loan officer will operate honestly,  
31 fairly, and efficiently within the purposes of this subchapter; and

32 (D) Complied with the prelicensing education and testing  
33 requirements of subdivision (b)(3) of this section; and

34 (2) The applicant's employer has met the surety bond requirement  
35 of subdivision (f)(1) of this section.

36

1 SECTION 18. Arkansas Code § 23-39-506 is amended to read as follows:  
2 23-39-506. License renewal – Termination.

3 (a) ~~Except as provided in § 23-39-517, each~~ Each licensed mortgage  
4 broker, mortgage banker, and mortgage servicer wishing to renew a license  
5 shall:

6 (1)~~(A)~~ File a renewal application with the Securities  
7 Commissioner in the form prescribed by the commissioner ~~within one hundred~~  
8 ~~twenty (120) days after the end of the licensee's fiscal year, between~~  
9 November 1 and December 31 of the calendar year;

10 ~~(B) A mortgage banker or a mortgage servicer shall also~~  
11 ~~submit with the renewal application audited financial statements through the~~  
12 ~~end of the mortgage banker's or mortgage servicer's previous fiscal year~~  
13 ~~that:~~

14 ~~(i) Reflect that the mortgage banker or mortgage~~  
15 ~~servicer has a net worth of at least twenty five thousand dollars (\$25,000);~~  
16 ~~and~~

17 ~~(ii) Comply with the requirements of § 23-39-~~  
18 ~~505(g)(1)(A)-(C).~~

19 ~~(C) A mortgage broker shall also submit with the renewal~~  
20 ~~application financial statements through the end of the mortgage broker's~~  
21 ~~previous fiscal year that:~~

22 ~~(i) Reflect that the mortgage broker has a net worth~~  
23 ~~of at least twenty five thousand dollars (\$25,000); and~~

24 ~~(ii) Comply with the requirements of § 23-39-~~  
25 ~~505(g)(2)(A) and (B); and~~

26 (2)(A) Provide the commissioner with an annual report of  
27 mortgage activity.

28 (B) The commissioner may designate by rule or order the  
29 information to be provided in the annual report;

30 (3) Present proof to the commissioner that the surety bond  
31 required in § 23-39-505(f)(1) is still in effect; and

32 (4) Pay the commissioner an annual renewal fee of three hundred  
33 fifty dollars (\$350) for the licensee's principal ~~office~~ place of business  
34 and one hundred dollars (\$100) for each of the licensee's ~~licensed~~ branch  
35 offices.

36 (b) The failure of a mortgage broker, mortgage banker, or mortgage

1 servicer to timely file a renewal application shall subject the licensee to a  
2 late fee of ~~twenty five dollars (\$25.00) for each day, up to a maximum of~~  
3 ~~sixty (60) days, that the renewal application is late~~ one hundred dollars  
4 (\$100).

5 (c) ~~Except as provided in § 23-39-517, each~~ Each licensed loan officer  
6 wishing to renew a license shall:

7 (1) File an application with the commissioner in the form  
8 prescribed by the commissioner ~~no later than sixty (60) days prior to the~~  
9 ~~expiration date of the license~~ between November 1 and December 1 of the  
10 calendar year;

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

14 (3) Pay an annual renewal fee of fifty dollars (\$50.00).

15 (d) The failure of a loan officer to timely file a renewal application  
16 shall subject the loan officer to a late fee of fifty dollars (\$50.00).

17 (e)(1)(A) ~~Any~~ A late fee assessed ~~pursuant to~~ under subsection (b) or  
18 subsection (d) of this section shall be in addition to the renewal  
19 application fee under subsection (a) or subsection (c) of this section.

20 ~~(B) but may be waived, in whole or in part, at the sole~~  
21 ~~discretion of~~ All or part of the late fee may be waived by the commissioner  
22 for good cause ~~shown~~.

23 (2)(A) The commissioner may ~~deem~~ consider an application and a  
24 license to be abandoned and surrendered and may require the licensee to  
25 comply with the requirements for the initial issuance of a license under this  
26 subchapter in order to continue in business, if the licensee:

27 (i) Fails to file a renewal application within ~~sixty~~  
28 ~~(60)~~ fifteen (15) days after the date the renewal application is due;

29 (ii) Unreasonably fails to remedy any deficiency in  
30 an application within thirty (30) days following the sending of written  
31 notice to the licensee; or

32 (iii) Unreasonably fails to deliver additional  
33 information or documents to the commissioner within thirty (30) days  
34 following the sending of written notice to the licensee.

35 (B) For purposes of this subdivision (e)(2), notice shall  
36 be ~~deemed~~ complete upon:

1                    (i) ~~deposit~~ Deposit in the United States mail,  
 2 postage prepaid, to the address of the licensee listed in the application; or  
 3                    (ii) Delivery through an automated licensing system  
 4 approved by the commissioner.

5                    (3) The commissioner shall not reissue ~~any~~ a license for which a  
 6 late fee has accrued as a result of a person's failure to timely file a  
 7 renewal application unless the late fee has been paid or waived by the  
 8 commissioner for good cause ~~shown~~.

9                    (f)(1) A mortgage banker or a mortgage servicer shall submit audited  
 10 financial statements to the commissioner within ninety (90) days after the  
 11 end of the mortgage banker's or mortgage servicer's fiscal year.

12                    (2) The audited financial statements submitted to the  
 13 commissioner under subdivision (f)(1) of this section shall:

14                    (A) Reflect that the mortgage banker or mortgage servicer  
 15 has a net worth of at least twenty-five thousand dollars (\$25,000); and

16                    (B) Comply with the requirements of § 23-39-505(g)(1)(A) -  
 17 (C).

18                    (3)(A) Failure to timely submit audited financial statements to  
 19 the commissioner shall result in a late fee of two hundred fifty dollars  
 20 (\$250).

21                    (B) All or part of the late fee may be waived by the  
 22 commissioner for good cause.

23  
 24                    SECTION 19. Arkansas Code § 23-39-508(g), concerning penalties for a  
 25 mortgage broker, mortgage banker, or mortgage servicer that does not comply  
 26 with requirements for managing principals and branch managers, is amended to  
 27 read as follows:

28                    (g)(1) ~~Any~~ A mortgage broker, mortgage banker, or mortgage servicer  
 29 that does not comply with this section shall pay a late fee ~~equal to ten~~  
 30 ~~dollars (\$10.00) for each day that he or she fails to notify the commissioner~~  
 31 ~~of the violation, not to exceed six hundred dollars (\$600)~~ of two hundred  
 32 fifty dollars (\$250).

33                    (2) ~~The~~ All or part of the late fee may be waived, ~~in whole or~~  
 34 ~~in part, in the sole discretion of~~ by the commissioner ~~and~~ for good cause  
 35 ~~shown~~.

36                    (3) The commissioner may revoke or suspend the license of any

1 mortgage broker, mortgage banker, or mortgage servicer who fails to pay any  
2 late fee assessed under subdivision (g)(1) of this section.

3  
4 SECTION 20. Arkansas Code § 23-39-509(d)(2), concerning penalties for  
5 a mortgage broker, mortgage banker, or mortgage servicer that does not comply  
6 with reporting requirements for changes in business locations, is amended to  
7 read as follows:

8 (2)(A) Any licensee that does not comply with subdivision (d)(1)  
9 of this section shall pay a late fee ~~equal to ten dollars (\$10.00) for each~~  
10 ~~day that he or she fails to notify the commissioner, up to a maximum of six~~  
11 ~~hundred dollars (\$600) of two hundred fifty dollars (\$250).~~

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

14  
15 SECTION 21. Arkansas Code § 23-39-510 is amended to read as follows:  
16 23-39-510. Licensee duties.

17 (a) In addition to duties imposed by other statutory or common law,  
18 each person required to be licensed under this subchapter shall:

19 (1) Safeguard and account for any money received for, from, or  
20 on behalf of the borrower;

21 (2) Follow reasonable and lawful instructions from the borrower;

22 (3) Act with reasonable skill, care, and diligence; ~~and~~

23 (4) Make reasonable efforts with lenders with whom a broker  
24 regularly does business to secure a loan that is reasonably advantageous to  
25 the borrower considering all the circumstances, including the rates, charges,  
26 and repayment terms of the loan and the loan options for which the borrower  
27 qualifies with such lenders; and

28 (5) Include the full name, address, and telephone number of the  
29 licensee in all solicitations and advertisements.

30 (b) The unique identifier of a person soliciting or originating a  
31 mortgage loan shall be clearly shown on all mortgage loan application forms,  
32 solicitations, advertisements, business cards, websites, and any other  
33 document or medium established by rule or order of the Securities  
34 Commissioner.

35  
36 SECTION 22. Arkansas Code § 23-39-511(d)(2), concerning penalties for

1 a mortgage broker, mortgage banker, or mortgage servicer that does not comply  
2 with reporting requirements for inaccurate or incomplete records, is amended  
3 to read as follows:

4 (2)(A) Any licensee that does not comply with subdivision (d)(1)  
5 of this section shall pay a late fee of ~~ten dollars (\$10.00) for each day~~  
6 ~~that he or she fails to file a correcting amendment, up to a maximum of six~~  
7 ~~hundred dollars (\$600)~~ two hundred fifty dollars (\$250).

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

11  
12 SECTION 23. Arkansas Code § 23-39-512(b), concerning the public  
13 inspection of records, is amended to read as follows:

14 (b) Except for reasonably segregable portions of information and  
15 records that by law would ~~routinely be made~~ be made routinely available to a  
16 party ~~other than an agency~~ in litigation with the commissioner, the  
17 commissioner shall not publish or make available the following information:

18 (1) Information contained in reports, summaries, analyses,  
19 letters, or memoranda arising out of, in anticipation of, or in connection  
20 with an examination or inspection of the books and records of any person or  
21 any other investigation;

22 (2) Interagency or intra-agency memoranda or letters,  
23 including;

24 (A) ~~generally~~ Generally, records ~~which~~ that reflect  
25 discussions between or consideration by the commissioner or members of his or  
26 her staff, or both, of any action taken or proposed to be taken by the  
27 commissioner or by any members of his or her staff; and

28 (B) ~~specifically~~ Specifically, reports, summaries,  
29 analyses, conclusions, or any other work product of the commissioner or of  
30 attorneys, accountants, analysts, or other members of the commissioner's  
31 staff, prepared in the course of an inspection of the books or records of any  
32 person whose affairs are regulated by the commissioner or prepared otherwise  
33 in the course of an examination or investigation or related litigation  
34 conducted by or on behalf of the commissioner, ~~except those that by law would~~  
35 ~~routinely be made to a party other than an agency in litigation with the~~  
36 ~~commissioner~~;

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

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

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

11 (4)(A) Investigatory records compiled for law enforcement  
12 purposes to the extent that production of the records would:

13 (i) Interfere with enforcement proceedings;

14 (ii) Deprive a person of a right to a fair trial or  
15 an impartial adjudication; or

16 (iii) Disclose the identity of a confidential  
17 source.

18 (B) The commissioner may also withhold investigatory  
19 records that would:

20 (i) Constitute an unwarranted invasion of personal  
21 privacy;

22 (ii) Disclose investigative techniques and  
23 procedures; or

24 (iii) Endanger the life or physical safety of law  
25 enforcement personnel.

26 (C) Investigatory records under this section include:

27 (i) All documents, records, transcripts,  
28 correspondence, and related memoranda and work products concerning  
29 examinations and other investigations and related litigation as authorized by  
30 law that pertain to or may disclose the possible violations by any person of  
31 any provision of any of the statutes, rules, or regulations administered by  
32 the commissioner; and

33 (ii) All written communications from or to any  
34 person confidentially complaining or otherwise furnishing information  
35 respecting the possible violations, as well as all correspondence and  
36 memoranda in connection with the confidential complaints or information;



1 (5) Information contained in or related to examinations,  
2 operating, or condition reports prepared by, on behalf of, or for the use of  
3 ~~any~~ an agency responsible for the regulation or supervision of financial  
4 institutions or mortgage lenders;

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

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

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

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

27 (7) Trade secrets obtained from any person; or

28 (8) Any other records that are required to be closed to the  
29 public and are not ~~deemed~~ considered open to public inspection under the  
30 Freedom of Information Act of 1967, § 25-19-101 et seq., or under other law.

31  
32 SECTION 24. Arkansas Code § 23-39-512, concerning public inspection of  
33 records filed with the Securities Commissioner, is amended to add additional  
34 subsections to read as follows:

35 (c) This section does not prevent the commissioner from sharing with  
36 other state or federal law enforcement authorities, regulatory authorities,

1 or self-regulatory organizations authorized by law any information that the  
2 commissioner may have or may obtain in aid of the enforcement of this  
3 subchapter or any other state or federal law.

4 (d)(1) Except as otherwise provided in this subchapter, the  
5 requirements of any federal or state law regarding privacy or confidentiality  
6 of any information or material provided to an automated licensing system  
7 under this subchapter and any privilege arising under federal or state law,  
8 including the rules of any federal or state court with respect to the  
9 information or material, shall continue to apply to the information or  
10 material after the information or material has been disclosed to the  
11 automated licensing system.

12 (2) The information or material provided to an automated  
13 licensing system under this subchapter may be shared with a state or federal  
14 regulatory official with mortgage industry oversight authority without the  
15 loss of privilege or the loss of confidentiality protections provided by  
16 federal or state law.

17  
18 SECTION 25. Arkansas Code § 23-39-513(13), concerning unlawful  
19 activities, is amended to read as follows:

20 (13) To unreasonably fail to deliver or provide information or  
21 documents promptly to the commissioner upon written request or to knowingly  
22 withhold, abstract, remove, mutilate, destroy or secrete any books, records,  
23 computer records, or other information; or  
24

25 SECTION 26. Arkansas Code § 23-39-514(a)(2)(C), concerning grounds to  
26 deny, suspend, revoke, or refuse to issue or renew a license, is amended to  
27 read as follows:

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

30 (i) ~~Any~~ A felony;

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

34 (iii) ~~Any~~ An offense involving mortgage lending, any  
35 aspect of the mortgage industry, or any aspect of the securities industry,  
36 the insurance industry, or any other activity pertaining to financial

1 services;

2

3 SECTION 27. Arkansas Code § 23-39-514(g)(1)(C), concerning production  
4 of books and records, is amended to read as follows:

5 (C) ~~Require~~ Issue subpoenas to require the production of  
6 any books, papers, correspondence, memoranda, agreements, or other documents  
7 or records ~~which that~~ the commissioner ~~deems~~ considers relevant or material  
8 to the inquiry.

9

10 SECTION 28. Arkansas Code § 23-39-518(c)(1), concerning cooperation  
11 with other regulatory agencies, is amended to read as follows:

12 (1) The commissioner may permit or require initial and renewal  
13 registration filings required under this subchapter to be filed with the  
14 Conference of State Bank Supervisors, a subsidiary entity owned by the  
15 Conference of State Bank Supervisors, the ~~National Association of Securities~~  
16 ~~Dealers~~ Financial Industry Regulatory Authority, or another entity  
17 maintaining or operating a multistate automated licensing system.

18

19 /s/ Wells

20

21 **APPROVED: 4/1/2009**

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36