

State of Arkansas

76th General Assembly

Regular Session, 1987

AS ENGROSSED 2/12/87

HOUSE BILL 1104

By: Representative Mahony

"AN ACT TO AMEND SECTION 5 OF ACT 806 OF 1977, AS AMENDED [ARK. STATS. 67-2205], TO CLARIFY AND BROADEN THE EXEMPTION FROM REGISTRATION UNDER THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 5 of Act 806 of 1977, as amended, the same being Ark. Stat. Ann. §67-2205 (Cum. Supp. 1985), is hereby amended to read as follows:

"(A) Any Arkansas or Federally chartered bank, savings bank, trust company, savings and loan association, credit union, industrial loan company, insurance company, small business investment corporation licensed pursuant to the Small Business Investment Act of 1958, as amended, real estate investment trust as defined in 26 U.S.C. Sec. 856 or any direct, wholly-owned subsidiary of one of these organizations;"

(B) An attorney-at-law rendering services in the performances of his duties as an attorney-at-law.

(C) An Arkansas licensed real estate broker rendering services in the performance of his duties as a real estate broker who obtains financing for a real estate transaction, if:

(i) the real estate broker does not act as a loan broker in more than five transactions during any twelve month period; and

(ii) he does not receive a fee for his activities as a loan broker until after financing is actually obtained; and

(iii) he files with the Commissioner within thirty days of each transaction a disclosure statement describing the transaction, which statement shall contain such information as the Commissioner by rule or order may require. An Arkansas licensed real estate broker rendering

services in the performance of his duties as a real estate broker who acts as a loan broker and who receives a fee for obtaining financing in six or more real estate transactions in any twelve-month period must register under this Act but is exempt from the net worth requirements herein;

(D) Any mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association or the U.S. Veterans Administration, or the Government National Mortgage Association or the U.S. Department of Housing and Urban Development as an approved seller or servicer; provided however, such a mortgage loan company shall submit an annual audited financial statement of its books and records accompanied by an opinion acceptable to the Commissioner. Said audit shall be filed with the Commissioner within ninety (90) days of the close of its fiscal year;

(E) Any person doing any act under order of any court;

(F) Any one natural person, or husband or wife, who provides funds for investment in loans secured by a lien on real property, on his own account, who does not charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance and recording services, and who does not collect funds to be used for the payment of any taxes or insurance premiums on the property securing any such loans;

(G) Any person doing business under the laws of this State or the United States relating to any broker-dealer, agent or investment adviser duly registered with; the Arkansas Securities Department;

(H) The United State of America, the State of Arkansas or any other state, and any Arkansas city, county, or other political subdivision, and any agency, division or corporate instrumentality of any of the foregoing.

(I) Any person, or wholly owned subsidiary thereof, who makes sales of real property which that person owns and makes purchase money loans to the purchasers of such real property which loans are secured by a lien or mortgage on that real property, provided that no funds for the payment of insurance and taxes on such real property are held by the maker of the liens or mortgages and that the maker of such liens or mortgages does not sell such liens or mortgages in the secondary market other than to affiliated or subsidiary persons;

(J) Any agricultural loan organization which is subject to licensing, supervision or auditing of the U.S. Agricultural Stabilization and

Conservation Service, Commodity Credit Corporation, Farmers Home Administration, Farm Credit Administration or the U.S. Department of Agriculture."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 3. It is hereby found and determined that the Arkansas Mortgage Loan Company and Loan Broker Act does not provide an express exemption from its registration provisions for certain entities, credit unions and government regulated agricultural lending organizations, that are functionally similar or equivalent to other entities specifically exempted from the registration provisions of that Act. The failure of the Act to expressly provide for these exemptions is a source of confusion within the financial services industry and results in disparate treatment for entities and persons similarly situated under the law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its passage and approval.

