

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Cunningham

A Bill

HOUSE BILL 1875

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE 23-39-306 TO EXEMPT CERTAIN
9 LOAN BROKERS FROM REGISTRATION AND FILING REQUIREMENTS;
10 AND FOR OTHER PURPOSES."

Subtitle

14 "AN ACT TO EXEMPT CERTAIN LOAN BROKERS
15 FROM REGISTRATION AND FILING
16 REQUIREMENTS."

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

21 SECTION 1. Arkansas Code 23-39-306 is amended to read as follows:

22 "23-39-306. Exemptions from registration, bond, and net worth
23 requirements.

24 (a) The following shall be exempt from registration, bond, and net
25 worth under this chapter:

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

32 (2) An attorney at law rendering services in the performance of
33 his duties as an attorney at law;

34 (3)(A) *An Arkansas licensed real estate broker rendering*
35 *services in the performance of his duties as a real estate broker who obtains*

1 *financing for a real estate transaction if:*

2 *(i) The real estate broker does not act as a loan*
3 *broker in more than five (5) transactions during any twelve month period;*

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

6 *(iii) If he files with the commissioner, within*
7 *thirty (30) days of each transaction, a disclosure statement describing the*
8 *transaction, which statement shall contain any information which the*
9 *commissioner by rule or order may require.*

10 *(B) An Arkansas licensed real estate broker rendering*
11 *services in the performance of his duties as a real estate broker who acts as*
12 *a loan broker and who receives a fee for obtaining financing in six (6) or*
13 *more real estate transactions in any twelve month period must register under*
14 *this chapter but is exempt from the net worth requirements herein;*

15 *(4) Any mortgage loan company which is subject to licensing,*
16 *supervision, or auditing by the Federal National Mortgage Association, the*
17 *United States Department of Veterans Affairs, or the Government National*
18 *Mortgage Association, or the United States Department of Housing and Urban*
19 *Development as an approved seller or servicer. However, the mortgage loan*
20 *company shall submit an annual audited financial statement of its books and*
21 *records accompanied by an opinion acceptable to the commissioner. The audit*
22 *shall be filed with the commissioner within ninety (90) days of the close of*
23 *its fiscal year;*

24 *(5) Any person doing any act under order of any court;*

25 *(6) Any one (1) natural person, or husband or wife, who provides*
26 *funds for investment in loans secured by a lien on real property, on his own*
27 *account, who does not charge a fee or cause a fee to be paid for any service*
28 *other than the normal and scheduled rates for escrow, title insurance, and*
29 *recording services and who does not collect funds to be used for the payment*
30 *of any taxes or insurance premiums on the property securing the loans;*

31 *(7) Any person doing business under the laws of this state or*
32 *the United States relating to any broker-dealer, agent, or investment adviser*
33 *duly registered with the State Securities Department;*

34 *(8) The United States, the State of Arkansas or any other state,*
35 *any Arkansas city, county, or other political subdivision, and any agency,*

1 division, or corporate instrumentality of any of the foregoing;

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

10 (10) Any agricultural loan organization which is subject to
11 licensing, supervision, or auditing of the United States Agricultural
12 Stabilization and Conservation Service, Commodity Credit Corporation, Farmers
13 Home Administration, Farm Credit Administration, or the United States
14 Department of Agriculture;

15 (11) Any loan broker who does not receive a fee or other
16 consideration other than from the lender after financing is actually
17 obtained, if the lender is registered or exempted from registration pursuant
18 to the provisions of this subchapter.

19 (b)(1) Any person doing business in the state under the exemption set
20 forth in subdivision (a)(4) of this section shall file proof of the exemption
21 in such form as the commissioner may prescribe, together with a filing fee of
22 one hundred dollars (\$100.00).

23 (2) The filing fee for each annual audited financial statement
24 which is filed pursuant to subdivision (a)(4) of this section shall be fifty
25 dollars (\$50.00)."

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27 SECTION 2. All provisions of this act of a general and permanent
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
29 Code Revision Commission shall incorporate the same in the Code.

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31 SECTION 3. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

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SECTION 4. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 5. EMERGENCY. It is found and determined by the General Assembly of the State of Arkansas that changing financing relationships in the marketplace render an undue burden to many Arkansas businesses who otherwise would be subjected to the registration, bond and net worth requirements of the Mortgage Loan Company and Loan Broker Act of 1977, and further that the exemption filing requirements should be made more practical and realistic, and that this act will remove those unnecessary burdens while still providing adequate protection to the public. 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 and after its passage and approval.

/s/Rep. Cunningham

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