

1 State of Arkansas  
2 82nd General Assembly  
3 Regular Session, 1999

# A Bill

SENATE BILL 209

4  
5 By: Senator Webb  
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## For An Act To Be Entitled

8  
9 "AN ACT TO AMEND THE ARKANSAS MORTGAGE LOAN COMPANY  
10 AND LOAN BROKER ACT."

## Subtitle

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13 "TO AMEND THE ARKANSAS MORTGAGE LOAN  
14 COMPANY AND LOAN BROKER ACT."  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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19 SECTION 1. Arkansas Code 23-39-304(a) is amended to read as follows:

20 "(a)(1) ~~Each~~ Upon application for initial registration or renewal of  
21 registration, each mortgage loan company shall ~~post~~ deposit with the  
22 commissioner a corporate surety bonds in the amount of ~~twenty-five thousand~~  
23 ~~dollars (\$25,000)~~ thirty-five thousand dollars (\$35,000).

24 (2) Any appropriate deposit of cash or securities issued by the  
25 federal government, the State of Arkansas, or any political subdivision  
26 thereof shall be accepted in lieu of any corporate surety bond required.

27 (3) Deposits of cash or securities shall not be withdrawn until  
28 five (5) years after the last effective date of the registration."  
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30 SECTION 2. Arkansas Code 23-39-306(a) is amended to read as follows:

31 "(a) ~~The~~ Unless indicated otherwise, the following shall be exempt from  
32 registration, bond, and net worth requirements under this chapter:

33 (1) Any ~~Arkansas or federally chartered bank, savings bank, trust~~  
34 ~~company, savings and loan association, credit union, or industrial loan~~  
35 company chartered under the laws of this State, insurance company licensed or  
36 authorized to conduct business with the Arkansas Insurance Department, small

1 business investment corporation licensed pursuant to the Small Business  
 2 Investment Act of 1958, as amended, ~~or~~ real estate investment trust as defined  
 3 in 26 U.S.C. § 856, or any state or federally chartered bank, savings bank,  
 4 savings and loan association, or credit union whose accounts are insured by  
 5 the Federal Deposit Insurance Corporation or the National Credit Union  
 6 Administration, or any direct, wholly owned subsidiary of one of these  
 7 organizations;

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

10 (3)(A) An Arkansas licensed real estate broker rendering services  
 11 in the performance of his duties as a real estate broker who obtains financing  
 12 for a real estate transaction if:

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

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

17 (iii) He files with the commissioner, within thirty (30)  
 18 days of each transaction, a disclosure statement describing the transaction,  
 19 which statement shall contain any information which the commissioner by rule  
 20 or order may require.

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

26 (4) Any mortgage loan company which is subject to licensing,  
 27 supervision, or auditing by the Federal National Mortgage Association ('Fannie  
 28 Mae'), the Government National Mortgage Association ('Ginnie Mae'), or the  
 29 United States Department of Housing and Urban Development ('HUD') as an  
 30 approved seller or servicer shall be exempt from the registration requirements  
 31 of this chapter. However, ~~the~~ upon the initial or renewal filing of the proof  
 32 of exemption required by subsection (b) of this section, each such mortgage  
 33 loan company shall submit an annual audited financial statements of its books  
 34 and records which reflect it has a net worth of at least twenty-five thousand  
 35 dollars (\$25,000) accompanied by an opinion acceptable to the commissioner,  
 36 and deposit the corporate surety bond, cash or securities in accordance with

1 Section 23-39-304 of this chapter. The audited financial statements shall be  
 2 filed with the commissioner within ninety (90) days of the close of its fiscal  
 3 year and the most current audited financial statements which are no more than  
 4 twelve (12) months old shall be filed with the initial filing. Any mortgage  
 5 loan company ~~licensed with~~ which was approved to participate in the United  
 6 States Department of Veterans Affairs Loan Guaranty Program on or before July  
 7 1, 1997, shall be exempt from the registration, bond, and net worth  
 8 requirements of this chapter so long as that mortgage loan company remains so  
 9 ~~licensed~~ approved to participate and is otherwise in compliance with the  
 10 provisions of this chapter;

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

12 (6) Only one (1) natural person, or husband or wife, who  
 13 provides funds for investment in loans secured by a lien on real property, on  
 14 his own account, who does not charge a fee or cause a fee to be paid for any  
 15 service other than the normal and scheduled rates for escrow, title insurance,  
 16 and recording services and who does not collect funds to be used for the  
 17 payment of any taxes or insurance premiums on the property securing the loans;

18 (7) Any person doing business under the laws of this state or  
 19 the United States relating to any broker-dealer, agent, or investment advisor  
 20 duly registered with the State Securities Department.

21 (8) The United States, the State of Arkansas or any other state,  
 22 any Arkansas city, county, or other political subdivision, and any agency,  
 23 division, or corporate instrumentality of any of the foregoing;

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

32 (10) Any agricultural loan organization which is subject to  
 33 licensing, supervision, or auditing of the United States Agricultural  
 34 Stabilization and Conservation Service, Commodity Credit Corporation, Farmers  
 35 Home Administration, Farm Credit Administration, or the United States  
 36 Department of Agriculture;

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

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 6           SECTION 3. Arkansas Code 23-39-307 is amended to read as follows:

7           "23-39-307. Rejection, suspension, or revocation of registration or  
 8 exemption.

9           (a) The commissioner may reject, suspend or revoke any registration when  
 10 the applicant or registrant:

11           (1) Does not meet the net ~~capital~~ worth requirement of § 23-39-305;

12           (2) Is unfit, through lack of financial responsibility, experience,  
 13 or otherwise, to conduct the business of a mortgage loan company or loan  
 14 broker, as the case may be;

15           (3) Does not conduct his business in accordance with law or has  
 16 violated any provision of this chapter;

17           (4) Collects interest at a usurious rate;

18           (5) Is in such financial condition that he cannot continue in  
 19 business with safety to his customers;

20           (6) Has been guilty of fraud in connection with any transaction  
 21 governed by this chapter;

22           (7) Has made any misrepresentations or false statements to, or  
 23 concealed any essential or material fact from, any person in the course of the  
 24 mortgage loan company business;

25           (8) Has knowingly made or caused to be made to the commissioner any  
 26 false representation of material fact, or has suppressed or withheld from the  
 27 commissioner any information which the applicant or registrant possesses and  
 28 which, if submitted by him, would have rendered the applicant or registrant  
 29 ineligible to be registered under this chapter;

30           (9) Has failed to account to persons interested for all funds  
 31 received for the escrow account;

32           (10) Has refused to permit an examination by the commissioner of his  
 33 books and affairs or has refused or failed, within a reasonable time, to  
 34 furnish any information or make any report that may be required by the  
 35 commissioner under the provisions of this chapter;

36           (11) Has been convicted of a felony or any misdemeanor of which fraud

1 is an essential element.

2 (b) The commissioner may reject or revoke any exemption under this  
 3 chapter when the applicant or person has failed to comply with the provisions  
 4 of § 23-42-306(a)(4), or for any of the grounds set forth in subsections  
 5 (a)(2) – (11) of this section."

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 7 SECTION 4. Arkansas Code 23-39-309(a) is amended to read as follows:

8 "(a)(1) All moneys paid to the mortgage loan company for payment of  
 9 taxes, loan commitment deposits, work completion deposits, appraisals, credit  
 10 reports or insurance premiums on property which secures any loan made or  
 11 serviced by the mortgage loan company shall be deposited in an account which  
 12 is insured by the ~~Federal Savings and Loan Insurance Corporation or the~~  
 13 Federal Deposit Insurance Corporation or the National Credit Union  
 14 Administration, or any other account acceptable to the Federal National  
 15 Mortgage Association, the United States Department of Housing and Urban  
 16 Development, the Government National Mortgage Association, or the United  
 17 States Department of Veterans Affairs, and shall be kept separate, distinct,  
 18 and apart from funds belonging to the mortgage loan company.

19 (2) The funds, when deposited, are to be designated as an 'escrow  
 20 account', or under some other appropriate name, indicating that the funds are  
 21 not the funds of the mortgage loan company."  
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23 SECTION 5. EFFECTIVE DATE. It is hereby found and determined by the  
 24 Eighty-second General Assembly, that in order to avoid undue hardship to those  
 25 persons regulated under the Mortgage Loan Company and Loan Broker Act, it is  
 26 desirable to delay the effective date of the bonding requirements set forth  
 27 herein. Therefore, the amendments to Arkansas Code §§ 23-39-304(a) and 23-39-  
 28 306(a)(4) as set forth in Sections 1 and 2 of this act, insofar as they  
 29 pertain to bonds required to be posted with the commissioner, shall become  
 30 effective on January 1, 2000. All other provisions of this act shall become  
 31 effective on such date as do acts passed in the normal course of legislative  
 32 affairs in the absence of an emergency clause.  
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34 SECTION 6. All provisions of this Act of a general and permanent nature  
 35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
 36 Revision Commission shall incorporate the same in the Code.

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SECTION 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 8. All laws and parts of laws in conflict with this Act are hereby repealed.