

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.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/19/07

A Bill

HOUSE BILL 2407

5 By: Representative Bond
6
7

For An Act To Be Entitled

9 AN ACT TO AUTHORIZE THE SECURITIES COMMISSIONER
10 TO JOIN WITH REGULATORY AGENCIES OF OTHER STATES
11 AND ORGANIZATIONS IN ORDER TO PARTICIPATE IN AN
12 AUTOMATED MULTISTATE LICENSING SYSTEM FOR
13 MORTGAGE LOAN BROKERS, MORTGAGE LOAN BANKERS,
14 MORTGAGE LOAN SERVICES, AND MORTGAGE LOAN
15 OFFICES; TO AMEND THE FAIR MORTGAGE LENDING ACT;
16 AND FOR OTHER PURPOSES.
17

Subtitle

18 TO AUTHORIZE PARTICIPATION IN AN
19 AUTOMATED MULTISTATE LICENSING SYSTEM
20 FOR MORTGAGE LOAN BROKERS, MORTGAGE LOAN
21 BANKERS, MORTGAGE LOAN SERVICES, AND
22 MORTGAGE LOAN OFFICES, AND TO AMEND THE
23 FAIR MORTGAGE LENDING ACT.
24
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 23-39-502 is amended to read as follows:
30 23-39-502. Definitions.

31 As used in this subchapter:

32 (1) "Applicant" means a person who has applied to become
33 licensed under this subchapter as a loan officer, mortgage broker, mortgage
34 banker, or mortgage servicer;

35 ~~(1)~~(2) "Branch manager" means the individual who is in charge of
36 the business operations of one (1) or more branch offices of a mortgage



1 broker, mortgage banker, or mortgage servicer;

2 ~~(2)~~(3) "Branch office" means a location that is separate and
3 distinct from the licensee's principal place of business and includes a net
4 branch or any location from which business is conducted under the license or
5 in the name of the mortgage broker, mortgage banker, or mortgage servicer:

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

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

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

18 ~~(3)~~(4) "Commissioner" means the Securities Commissioner and
19 includes the commissioner's designees;

20 ~~(4)~~ "Control" means the power to vote more than twenty percent
21 ~~(20%) of outstanding voting shares or other interests of a corporation,~~
22 ~~partnership, limited liability company, limited partnership, association, or~~
23 ~~trust;~~

24 (5)(A) "Control" means the power, directly or indirectly, to
25 direct the management or policies of a company, whether through ownership of
26 securities, by contract, or otherwise.

27 (B) A person is presumed to control a company if the
28 person:

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

31 (ii) Directly or indirectly has the right to vote
32 ten percent (10%) or more of a class of a voting security of the company or
33 has the power to sell or direct the sale of ten percent (10%) or more of a
34 class of voting securities of the company;

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

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

4 (6) "Control affiliate" means a partnership, corporation, trust,
5 limited liability company, or other organization that directly or indirectly
6 controls or is controlled by the applicant;

7 (7) "Control person" means an individual who directly or
8 indirectly exercises control over the applicant;

9 ~~(5)~~(8) "Employee" means an individual who is licensed with or
10 employed by a mortgage broker, mortgage banker, or mortgage servicer, whether
11 by employment contract, agency, or other arrangement and regardless of
12 whether the individual is treated as an employee for purposes of compliance
13 with the federal income tax laws;

14 ~~(6)(A)~~(9)(A) "Exempt person" means a person not required to be
15 licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan
16 officer under this subchapter.

17 (B) "Exempt person" includes any of the following:

18 (i) An employee of a licensee whose responsibilities
19 are limited to clerical and administrative tasks for his or her employer and
20 who does not solicit borrowers, accept applications, or negotiate the terms
21 of loans on behalf of the employer;

22 (ii) An agency or corporate instrumentality of the
23 federal government or any state, county, or municipal government granting
24 mortgage loans under specific authority of the laws of any state or of the
25 United States;

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

28 (iv)(a) An insurance company licensed or authorized
29 to conduct business by the State Insurance Department to the extent that any
30 mortgage loan business conducted by or on behalf of the insurance company is
31 incidental to its insurance business.

32 (b) Notwithstanding subdivision (9)(B)(iv)(a)
33 of this section, "exempt person" does not include an insurance agent or
34 broker who receives compensation of any kind in connection with the referral,
35 placement, or origination of a mortgage loan;

36 (v) A small-business investment corporation licensed

1 under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq.;

2 (vi) A real estate investment trust as defined in 26
3 U.S.C. § 856;

4 (vii) A state or federally chartered bank, savings
5 bank, savings and loan association, or credit union, the accounts of which
6 are insured by the Federal Deposit Insurance Corporation or the National
7 Credit Union Administration or any of their operating subsidiaries;

8 (viii) An agricultural loan organization that is
9 subject to licensing, supervision, or auditing by the United States
10 Agricultural Stabilization and Conservation Service, Commodity Credit
11 Corporation, ~~Farmers Home~~ Rural Housing Administration, Farm Credit
12 Administration, or the United States Department of Agriculture;

13 (ix) A nonprofit corporation that:

14 (a) Qualifies as a nonprofit entity under §
15 501(c)(3) of the Internal Revenue Code;

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

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

20 (x)(a) A licensed real estate agent or broker who is
21 performing those activities subject to the regulation of the Arkansas Real
22 Estate Commission.

23 (b) Notwithstanding subdivision
24 ~~(6)(B)(x)(a)~~ (9)(B)(x)(a) of this section, an "exempt person" does not
25 include a real estate agent or broker who receives compensation of any kind
26 in connection with the referral, placement, or origination of a mortgage
27 loan;

28 (xi) A person who engages in seller-financed
29 transactions, or who as a seller of real property receives mortgages, deeds
30 of trust, or other security instruments on real estate as security for a
31 purchase money obligation, if:

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

35 (b) The ~~maker of the liens or mortgages~~ seller
36 does not sell the liens or mortgages in the secondary market other than to

1 affiliated or subsidiary persons;

2 (xii) An individual or husband and wife who provide
3 funds for investment in loans secured by a lien on real property on his or
4 her or their own account and who do not:

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

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

10 (xiii) An attorney at law rendering services in the
11 performance of his or her duties as an attorney at law;

12 (xiv) A person doing business under the laws of
13 Arkansas or the United States relating to any broker-dealer, agent,
14 investment adviser, or investment adviser representative registered with the
15 State Securities Department;

16 (xv) A person performing any act under order of any
17 court;

18 (xvi) A person acting as a mortgage broker, mortgage
19 banker, or mortgage servicer for any person located in Arkansas, if the
20 mortgage broker, mortgage banker, or mortgage servicer has no office or
21 employee in Arkansas and the real property that is the subject of the
22 mortgage is located outside of Arkansas;

23 (xvii) A person who brokers, makes, or services
24 mortgage loans if the only mortgage loans that the person brokers, makes, or
25 services in Arkansas are nonresidential mortgage loans;

26 (xviii) An officer or employee of an exempt person
27 described in subdivisions ~~(6)(B)(ii)-(xvi)~~ (9)(B)(ii)-(xvi) of this section
28 if acting in the scope of employment for the exempt person; and

29 (xix) Other persons as the commissioner may by rule
30 or order designate;

31 ~~(7)(10)~~ "Licensee" means a loan officer, mortgage broker,
32 mortgage banker, or mortgage servicer who is licensed under this subchapter;

33 ~~(8)(11)(A)~~ "Loan officer" means an individual other than an
34 exempt person described in subdivision ~~(6)(9)~~ of this section who in exchange
35 for compensation as an employee of or who otherwise receives compensation or
36 remuneration from a mortgage broker or a mortgage banker licensed under this

1 subchapter:

2 ~~(A)(i)~~ Solicits or offers to solicit an application
3 for a mortgage loan;

4 ~~(B)(ii)~~ Accepts or offers to accept an application
5 for a mortgage loan;

6 ~~(C)(iii)~~ Negotiates or offers to negotiate the terms
7 or conditions of a mortgage loan; or

8 ~~(D)(iv)~~ Issues or offers to issue a mortgage loan
9 commitment or interest rate guarantee agreement+.

10 (B) "Loan officer" does not include an individual who
11 performs clerical or administrative tasks in the processing of a mortgage
12 loan at the direction of and subject to the supervision and instruction of a
13 licensed loan officer or an underwriter if the individual performs no
14 activities under subdivision (11)(A) of this section;

15 ~~(9)(12)~~ "Make a mortgage loan" means to close a mortgage loan, to
16 advance funds, to offer to advance funds, or to make a commitment to advance
17 funds to a borrower under a mortgage loan;

18 ~~(10)(13)~~ "Managing principal" means a person who meets the
19 requirements of § 23-39-505 and who agrees to be primarily responsible for
20 the operations of a licensed mortgage broker, mortgage banker, or mortgage
21 servicer;

22 ~~(11)(14)~~ "Mortgage banker" means a person who engages in the
23 business of making mortgage loans for compensation or other gain;

24 ~~(12)(15)~~ "Mortgage broker" means a person who for compensation
25 or other gain or in the expectation of compensation or other gain and,
26 regardless of whether the acts are done directly or indirectly, through
27 contact by telephone, by electronic means, by mail, or in person with the
28 borrowers or potential borrowers:

29 (A) Accepts or offers to accept an application for a
30 mortgage loan;

31 (B) Solicits or offers to solicit an application for a
32 mortgage loan;

33 (C) Negotiates or offers to negotiate the terms or
34 conditions of a mortgage loan; or

35 (D) Issues or offers to issue mortgage loan commitments or
36 interest rate guarantee agreements to borrowers;

1 ~~(13)~~(16) "Mortgage loan" means a loan primarily secured by
2 either a mortgage or a deed of trust on real property;

3 ~~(14)~~(17) "Mortgage servicer" means a person that receives from
4 or on behalf of a borrower:

5 (A) Funds or credits in payment for a mortgage loan; or

6 (B) The taxes or insurance associated with a mortgage
7 loan;

8 ~~(15)~~(18) "Nonresidential mortgage loan" means a loan secured by
9 an interest in real property used or to be used for other than one-to-four-
10 family residential purposes;

11 ~~(16)~~(19) "Operating subsidiary" means a separate corporation,
12 limited liability company, or similar entity in which a national or state
13 bank, savings and loan association, or credit union, the accounts of which
14 are insured by the Federal Deposit Insurance Corporation or the National
15 Credit Union Administration, maintains more than fifty percent (50%) voting
16 rights, a controlling interest, or otherwise controls the subsidiary and no
17 other party controls more than fifty percent (50%) of the voting rights or a
18 controlling interest in the subsidiary;

19 ~~(17)~~(20) "Person" means an individual, partnership, limited
20 liability company, limited partnership, corporation, association, or other
21 group engaged in joint business activities, however organized; and

22 ~~(18)~~(21) "Principal place of business" means a stationary
23 construction consisting of at least one (1) enclosed room or building in
24 which negotiations of mortgage loan transactions of others may be conducted
25 in private or in which the primary business functions of the licensee are
26 conducted.

27
28 SECTION 2. Arkansas Code § 23-39-503 is amended to read as follows:

29 23-39-503. License required - Licensee records.

30 (a)~~(1)~~ It is unlawful for any person located in Arkansas other than an
31 exempt person to act or attempt to act, directly or indirectly, as a mortgage
32 broker, mortgage banker, loan officer, or mortgage servicer without first
33 obtaining a license from the Securities Commissioner under this subchapter.

34 ~~(2) Each mortgage banker and mortgage servicer that was exempt~~
35 ~~from the licensing requirements of §§ 23-39-101—23-39-309 [repealed] or~~
36 ~~held a valid license under §§ 23-39-101—23-39-309 [repealed] as of December~~

1 ~~31, 2003, shall have one hundred twenty (120) days from the end of its fiscal~~
2 ~~year to register under this section.~~

3 ~~(3) Each loan officer shall have until July 1, 2004, to register~~
4 ~~under this section.~~

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

10 (c) It is unlawful for any person other than an exempt person to
11 employ, to compensate, or to appoint as its agent any person to act as a loan
12 officer unless the loan officer is licensed as a loan officer under this
13 subchapter.

14 (d)(1) The license of a loan officer shall terminate when his or her
15 employment by or relationship with a mortgage broker or mortgage banker
16 licensed under this subchapter terminates.

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

23 (3)(A) Any licensee that does not comply with this section shall
24 pay a late fee of ten dollars (\$10.00) for each day that he or she fails to
25 notify the commissioner as provided in subdivision (d)(2) of this section,
26 not to exceed six hundred dollars (\$600).

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

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

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

3
4 SECTION 3. Arkansas Code § 23-39-504 is amended to read as follows:
5 23-39-504. Rulemaking authority.

6 The Securities commissioner may adopt any rules that he or she deems
7 necessary to:

- 8 (1) Carry out the provisions of this subchapter;
- 9 (2) Provide for the protection of the borrowing public; ~~and~~
- 10 (3) Provide any requirements necessary for the State of Arkansas
11 to participate in a multistate automated licensing system; and
- 12 ~~(3)~~(4) Instruct mortgage brokers, mortgage bankers, mortgage
13 servicers, and loan officers in interpreting this subchapter.

14
15 SECTION 4. Arkansas Code § 23-39-505 is amended as follows:
16 23-39-505. Qualifications for licensure - Issuance.

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

21 (2) The application may require that the information be
22 submitted in an electronic format.

23 (3) In addition to any other information required under this
24 subchapter or any rules adopted by the commissioner, the application shall
25 contain any information the commissioner deems necessary and shall include
26 the following:

27 (A) The applicant's name, address, and social security
28 number;

29 (B) The applicant's form of business and place of
30 organization, if applicable;

31 (C) The applicant's proposed method of and locations for
32 doing business, if applicable;

33 (D)(i) The qualifications and business history of the
34 applicant and any partner, officer, or director, any person occupying a
35 similar status or performing similar functions, or any person directly or
36 indirectly controlling the applicant.

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

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

7 (b) Any conviction of a misdemeanor involving
8 fraudulent dealings or moral turpitude or relating to any aspect of the
9 mortgage industry, the securities industry, the insurance industry, or any
10 other activity pertaining to financial services; and

11 (c) Any felony convictions; and

12 (E) With respect to:

13 (i) An application for licensing as a mortgage
14 banker, mortgage broker, or mortgage servicer, the applicant's financial
15 condition and business history; and

16 (ii) The application for licensing as a loan
17 officer, the applicant's business history.

18 (b) In addition to meeting the requirements imposed by the
19 commissioner under subsection (a) of this section, each individual applicant
20 for licensure as a loan officer shall:

21 (1) Be at least eighteen (18) years of age; ~~and~~

22 (2)(A) Have received a high school diploma or a general
23 educational development certificate.

24 (B) Subdivision (b)(2)(A) of this section does not apply
25 to an individual who is licensed as a loan officer on July 1, 2007; and

26 ~~(2)(3)~~ Have satisfactorily completed any educational and testing
27 requirements as the commissioner may by rule or order impose.

28 (c) In addition to the requirements under subsections (a) and (b) of
29 this section, each applicant for licensure as a mortgage broker, mortgage
30 banker, or mortgage servicer shall comply with the following requirements at
31 the time of application and at all times thereafter:

32 (1) If the applicant is a sole proprietor, the applicant shall
33 have at least three (3) years of experience in mortgage lending or other
34 experience or competency requirements as the commissioner may adopt by rule
35 or order;

36 (2) If the applicant is a general or limited partnership, at

1 least one (1) of its general partners shall have the experience as described
2 in subdivision (c)(1) of this section;

3 (3) If the applicant is a corporation, at least one (1) of its
4 principal officers shall have the experience as described in subdivision
5 (c)(1) of this section; and

6 (4) If the applicant is a limited liability company, at least
7 one (1) of its managers shall have the experience as described under
8 subdivision (c)(1) of this section.

9 (d) Each applicant shall identify in its application one (1) person
10 meeting the requirements of subsection (c) of this section to serve as the
11 applicant's managing principal.

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

16 (f)(1) Each mortgage banker and mortgage servicer shall post a surety
17 bond in the amount of one hundred thousand dollars (\$100,000), and each
18 mortgage broker shall post a surety bond in the amount of fifty thousand
19 dollars (\$50,000).

20 (2) The surety bond shall be in the form prescribed by the
21 commissioner and shall run to the state for the benefit of any claimants
22 against the licensee to secure the faithful performance of the obligations of
23 the licensee under this subchapter.

24 (3) The aggregate liability of the surety shall not exceed the
25 principal sum of the bond.

26 (4) A party having a claim against the licensee may bring suit
27 directly on the surety bond, or the commissioner may bring suit on behalf of
28 any claimants, either in one (1) action or in successive actions.

29 (5) Consumer claims shall be given priority in recovering from
30 the bond.

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

33 (g)(1) Each applicant filing for licensure as a mortgage banker,
34 ~~mortgage broker,~~ or mortgage servicer shall file with the commissioner as
35 part of his or her application audited financial statements that reflect that
36 the applicant has a net worth of at least twenty-five thousand dollars

1 (\$25,000) and are:

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

4 ~~(2)(B)~~ Prepared in accordance with generally accepted
5 accounting principals as promulgated by the Financial Accounting Standards
6 Board;

7 ~~(3)(C)~~ Accompanied by an ~~unqualified~~ opinion acceptable to
8 the commissioner; and

9 ~~(4)(D)~~ Dated within ~~twelve (12)~~ fifteen (15) months
10 preceding the date on which the application is filed.

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

15 (A) Certified as true and correct by the president or
16 chief financial officer of the mortgage broker;

17 (B) Prepared in accordance with generally accepted
18 accounting principles as promulgated by the Financial Accounting Standards
19 Board; and

20 (C) Dated within eighteen (18) months preceding the date
21 on which the application is filed.

22 (h) Any general partner, manager of a limited liability company, or
23 officer of a corporation who individually meets the requirements under
24 subsection (b) of this section shall be deemed to have met the qualifications
25 for licensure as a loan officer upon filing a written application with the
26 commissioner in the form prescribed by the commissioner and payment of the
27 applicable fee.

28 (i)(1) Each principal office and each branch office of a mortgage
29 broker, mortgage banker, or mortgage servicer licensed under this subchapter
30 shall obtain a separate license.

31 (2) A licensed mortgage broker, mortgage banker, or mortgage
32 servicer shall file with the commissioner an application in the form
33 prescribed by the commissioner that identifies the address of the principal
34 office, each branch office, and each branch manager.

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

1 (j) Except as set forth in § 23-39-503(d) and § 23-39-517, each
2 license issued by the commissioner under this subchapter shall expire at the
3 close of business on the following dates unless previously surrendered by the
4 licensee and the surrender is accepted by the commissioner, it is abandoned
5 by the licensee as provided in § 23-39-506, or it is suspended or revoked by
6 the commissioner:

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

10 (2) On the last day of the twelfth month after the date of
11 issuance in the case of a loan officer.

12 (k) Licenses issued under this subchapter are not transferable.

13 (l)(1) Control of a licensee shall not be acquired through a stock or
14 equity purchase, transfer of interest, or other device without the prior
15 written consent of the commissioner.

16 (2) Any person seeking to acquire control of a licensee, at
17 least thirty (30) days before the proposed change of control, shall:

18 (A) Pay the commissioner a fee of one hundred dollars
19 (\$100);

20 (B) Submit to the commissioner the information required
21 under subdivision (a)(3)(D) of this section and any other information deemed
22 relevant by the commissioner; and

23 (C) Certify that the licensee shall continue to meet the
24 qualifications under this section.

25 (3) The commissioner may refuse to give written consent if he or
26 she finds that any of the grounds for denial, revocation, or suspension of a
27 license under § 23-39-514 are applicable to the person seeking to acquire
28 control of a license.

29 (m)(1) An application filed with the commissioner may be withdrawn
30 upon written request of the applicant delivered to the commissioner at any
31 time before the granting of the license.

32 (2) However, if a notice of intent to deny the application has
33 been sent to the applicant, the applicant shall not withdraw the application
34 except upon the written direction of the commissioner.

35 (n)(1) Unless a proceeding has been commenced to suspend or revoke the
36 license, a license may be surrendered by a licensee by filing a written

1 request to surrender the license in a form acceptable to the commissioner.

2 (2) The surrender of the license becomes effective upon
3 acceptance by the commissioner.

4 (3) Notwithstanding a surrender or termination of a license and
5 acceptance of the surrender or termination by the commissioner, if a licensee
6 or any person acting on behalf of the licensee has knowingly violated any
7 provision of this subchapter or any rule or order promulgated or issued under
8 this subchapter:

9 (A) A proceeding may be commenced at any time within one
10 (1) year following the effective date of the surrender or termination of the
11 license; and

12 (B) An order may be entered revoking the license as of a
13 date before the acceptance of the surrender or termination of the license.

14
15 SECTION 5. Arkansas Code § 23-39-506 is amended to read as follows:
16 23-39-506. License renewal - Termination.

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

20 (1)(A) File a renewal application with the Securities
21 Commissioner in the form prescribed by the commissioner within one hundred
22 twenty (120) days after the end of the licensee's fiscal year.

23 ~~(2)(A)(B) Submit~~ A mortgage banker or a mortgage servicer shall
24 also submit with the renewal application audited financial statements through
25 the end of the ~~licensee's~~ mortgage banker's or mortgage servicer's previous
26 fiscal year that:

27 (i) ~~reflect~~ Reflect that the ~~applicant~~ mortgage
28 banker or mortgage servicer has a net worth of at least twenty-five thousand
29 dollars (\$25,000); and

30 (ii) ~~which comply~~ Comply with the requirements of §
31 23-39-505(g)(1)(A)-(C).

32 ~~(B)(C) The audited financial statements shall be:~~

33 ~~(i) Prepared by an independent certified public~~
34 ~~accountant;~~

35 ~~(ii) Prepared in accordance with generally accepted~~
36 ~~accounting principles as promulgated by the Financial Accounting Standards~~

1 ~~Board; and~~

2 ~~(iii) Accompanied by an unqualified opinion~~
3 ~~acceptable to the commissioner; and~~ A mortgage broker shall also submit with
4 the renewal application financial statements through the end of the mortgage
5 broker's previous fiscal year that:

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

8 (ii) Comply with the requirements of § 23-39-
9 505(g)(2)(A) and (B); and

10 ~~(3)(2)~~ Pay the commissioner an annual renewal fee of three
11 hundred fifty dollars (\$350) for the licensee's principal office and one
12 hundred dollars (\$100) for each of the licensee's licensed branch offices.

13 (b) The failure of a mortgage broker, mortgage banker, or mortgage
14 servicer to timely file a renewal application shall subject the licensee to a
15 late fee of twenty-five dollars (\$25.00) for each day, up to a maximum of
16 sixty (60) days, that the renewal application is late.

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

19 (1) File an application with the commissioner in the form
20 prescribed by the commissioner no later than sixty (60) days prior to the
21 expiration date of the license; ~~and~~

22 (2) Certify that the applicant has complied with the continuing
23 education requirements as required by rules promulgated by the commissioner;
24 and

25 ~~(2)(3)~~ Pay an annual renewal fee of fifty dollars (\$50.00).

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

28 (e)(1) Any late fee assessed pursuant to subsection (b) or subsection
29 (d) of this section shall be in addition to the renewal application fee under
30 subsection (a) or subsection (c) of this section but may be waived, in whole
31 or in part, at the sole discretion of the commissioner for good cause shown.

32 ~~(2)(A) If a mortgage broker, mortgage banker, mortgage servicer,~~
33 ~~or loan officer fails to file a renewal application within sixty (60) days~~
34 ~~after the date the renewal application is due, the commissioner may deem the~~
35 ~~license to be abandoned and surrendered and may require the licensee to~~
36 ~~comply with the requirements for the initial issuance of a license under this~~

1 ~~subchapter in order to continue in business.~~ The commissioner may deem an
2 application and a license to be abandoned and surrendered and may require the
3 licensee to comply with the requirements for the initial issuance of a
4 license under this subchapter in order to continue in business, if the
5 licensee:

6 (i) Fails to file a renewal application within sixty
7 (60) days after the date the renewal application is due;

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

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

14 (B) For purposes of this subdivision (e)(2), notice shall
15 be deemed complete upon deposit in the United States mail, postage prepaid,
16 to the address of the licensee listed in the application.

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

21
22 SECTION 6. Arkansas Code § 23-39-508(a), concerning requirements of a
23 managing principal, is amended to read as follows:

24 (a)(1) Each mortgage broker, mortgage banker, or mortgage servicer
25 licensed under this subchapter shall have a managing principal who operates
26 the business under that person's full charge, control, and supervision.

27 (2) The managing principal shall:

28 (A) Have at least three (3) years of experience in
29 mortgage lending; or

30 (B) Meet the experience and competency requirements
31 prescribed by rule or order of the Securities Commissioner.

32
33 SECTION 7. Arkansas Code § 23-39-509, concerning address changes and
34 the location of loan records, is amended to add an additional subsection to
35 read as follows:

36 (e) A mortgage broker, mortgage banker, or mortgage servicer that

1 ceases to do business in this state shall:

2 (1) Notify the commissioner within thirty (30) days after the
3 mortgage broker, mortgage banker, or mortgage servicer ceases to do business
4 in this state that the mortgage broker, mortgage banker, or mortgage servicer
5 has ceased to do business in this state; and

6 (2) Provide the commissioner the address where all records
7 pertaining to loans made or serviced in this state will be maintained for the
8 period of time required by this subchapter or any rule of the commissioner.

9
10 SECTION 8. Arkansas Code § 23-39-513 is amended to read as follows:

11 23-39-513. Prohibited activities.

12 In addition to the other activities that are prohibited under this
13 subchapter, it is unlawful for any person other than a person described in §
14 ~~23-39-502(6)(B)(vii)~~ § 23-39-502(9)(B)(vii) in the course of any mortgage
15 loan transaction or activity:

16 (1) To misrepresent or conceal any material fact or make any
17 false promise likely to influence, persuade, or induce an applicant for a
18 mortgage loan or a borrower to take a mortgage loan or to pursue a course of
19 misrepresentation through agents or otherwise;

20 (2) To improperly refuse to issue a satisfaction or release of a
21 mortgage;

22 (3) To fail to account for or to deliver to any person any
23 funds, documents, or other thing of value obtained in connection with a
24 mortgage loan, including money provided by a borrower for a real estate
25 appraisal or a credit report, that the mortgage banker, mortgage broker,
26 mortgage servicer, or loan officer is not entitled to retain;

27 (4) To pay, receive, or collect, in whole or in part, any
28 commission, fee, or other compensation for brokering a mortgage loan in
29 violation of this subchapter, including a mortgage loan brokered or solicited
30 by any unlicensed person other than an exempt person;

31 (5) To advertise mortgage loans, including rates, margins,
32 discounts, points, fees, commissions, or other material information without
33 disclosing the lengths of the loans, whether the interest rates are fixed or
34 adjustable, and any other material limitations on the loans;

35 (6) To fail to disburse funds in accordance with a written
36 commitment or agreement to make or service a mortgage loan;

1 (7) In connection with the advertisement, solicitation,
2 brokering, making, servicing, purchase, or sale of any mortgage loan, to
3 engage in any transaction, practice, or course of business that:

4 (A) Is not in good faith or fair dealing;

5 (B) Is misleading or deceptive; or

6 (C) Constitutes a fraud upon any person; ~~or~~

7 (8)(A) To broker or make a residential mortgage loan that
8 contains a penalty for prepayment if the prepayment is made after the
9 expiration of the thirty-six-month period immediately following the date on
10 which the loan was made.

11 (B) Any penalty for prepayment under subdivision (8)(A) of
12 this section made within the thirty-six-month period shall not exceed the
13 greater of:

14 (i) Three percent (3%) of the principal loan amount
15 remaining on the date of prepayment if the prepayment is made within the
16 first twelve-month period immediately following the date the loan was made;
17 two percent (2%) of the principal loan amount remaining on the date of
18 prepayment if the prepayment is made within the second twelve-month period
19 immediately following the date the loan was made; one percent (1%) of the
20 principal loan amount remaining on the date of prepayment if the prepayment
21 is made within the third twelve-month period immediately following the date
22 the loan was made; or

23 (ii) An amount equal to interest for six (6) months
24 calculated on eighty percent (80%) of the remaining principal balance due on
25 the residential mortgage loan as of the date the prepayment is made;

26 (9)(A) To influence or attempt to influence through coercion,
27 extortion, or bribery the development, reporting, result, or review of a real
28 estate appraisal sought in connection with a mortgage loan.

29 (B) This subdivision (9) does not prohibit a mortgage
30 broker or mortgage banker from asking the appraiser to do one (1) or more of
31 the following:

32 (i) Consider additional appropriate property
33 information;

34 (ii) Provide further detail, substantiation, or
35 explanation for the appraiser's value conclusion; or

36 (iii) Correct errors in the appraisal report;

1 (10) To broker or make a refinancing of a residential mortgage
2 loan when the refinancing charges additional points and fees, within a
3 twelve-month period after the original loan agreement was signed, unless the
4 refinancing results in a reasonable, tangible net benefit to the borrower,
5 considering all of the circumstances surrounding the refinancing;

6 (11) To broker or make a mortgage loan in violation of any
7 federal law or any law of Arkansas; ~~and~~

8 (12) To engage in practices that are dishonest or unethical in
9 the mortgage industry-;

10 (13) To unreasonably fail to deliver or provide information or
11 documents promptly to the commissioner upon written request; or

12 (14) To unreasonably fail to supervise the branches, loan
13 officers, and employees of the mortgage broker, mortgage banker, or mortgage
14 servicer.

15
16 SECTION 9. Arkansas Code § 23-39-514(c), concerning summary suspension
17 of a licensee's authority to operate, is amended to read as follows:

18 (c)(1) The commissioner by order may summarily postpone or suspend the
19 license of a licensee pending final determination of any proceeding under
20 this section.

21 (2) Upon entering the order, the commissioner shall promptly
22 notify the applicant or licensee that the order has been entered and the
23 reasons for issuing the order.

24 (3) The applicant or licensee may contest the order by
25 delivering a written request for a hearing to the commissioner within thirty
26 (30) days from the date on which notice of the order is sent by the
27 commissioner to the address of the licensee on file with the commissioner by
28 first class mail, postage prepaid.

29 (4) The commissioner shall schedule a hearing to be held within
30 thirty (30) days after the commissioner receives a timely written request for
31 a hearing, unless the hearing is postponed for a reasonable amount of time at
32 the request of the licensee.

33 (5) If a licensee does not request a hearing and the
34 commissioner does not order a hearing, the order will remain in effect until
35 it is modified or vacated by the commissioner.

36 (6) If a hearing is requested or ordered by the commissioner,

1 after notice of and opportunity for hearing, the commissioner may modify or
2 vacate the order or extend it until final determination.

3
4 SECTION 10. Arkansas Code § 23-39-514(d), concerning issuance of cease
5 and desist orders, is amended to read as follows:

6 (d)(1) In addition to other powers under this subchapter, upon finding
7 that any action of a person is in violation of this subchapter, the
8 commissioner may summarily order the person to cease and desist from the
9 prohibited action.

10 (2)(A) Upon entering the order under subdivision (d)(1) of this
11 section, the commissioner shall promptly notify the person that the order has
12 been entered and state the reasons for the order.

13 (B) The person may contest the cease and desist order by
14 delivering a written request for a hearing to the commissioner within thirty
15 (30) days from the date on which notice of the order is sent by the
16 commissioner to the last known address of the ~~licensee~~ person by first class
17 mail, postage prepaid.

18 (C) The commissioner shall schedule a hearing to be held
19 within ~~thirty (30) days~~ a reasonable amount of time after the commissioner
20 receives a timely written request for a hearing.

21 (D) If the person does not request a hearing and the
22 commissioner does not order a hearing, the order will remain in effect until
23 it is modified or vacated by the commissioner.

24 (E) If a hearing is requested or ordered, after notice of
25 and opportunity for hearing, the commissioner may modify or vacate the order
26 or make it permanent.

27 (3)(A) A person shall be subject to a civil penalty of up to
28 twenty-five thousand dollars (\$25,000) for each violation of the
29 commissioner's cease and desist order committed after entry of the order if:

30 (i) The person subject to the cease and desist order
31 fails to appeal the order in accordance with § 23-39-515 or if the person
32 appeals and the appeal is denied or dismissed; and

33 (ii) The person continues to engage in the
34 prohibited action in violation of the commissioner's order.

35 (B) The commissioner may file an action requesting the
36 civil penalty under subdivision (d)(3)(A) of this section with the Pulaski

1 County Circuit Court or any other court of competent jurisdiction.

2 (C) The penalties of this section apply in addition to,
3 but not in lieu of, any other provision of law applicable to a person for the
4 person's failure to comply with an order of the commissioner.

5
6 SECTION 11. Arkansas Code Title 23, Chapter 39, Subchapter 5 is
7 amended to add additional sections to read as follows:

8 23-39-517. Transition.

9 (a) Effective January 1, 2008, all licenses issued or renewed under
10 this subchapter shall expire on December 31 of each year, unless sooner
11 terminated by surrender, abandonment, change of employment, or order of the
12 Securities Commissioner.

13 (b) If a license is issued or renewed during the 2008 calendar year,
14 one-fourth (1/4) of the fees prescribed in §§ 23-39-505(e), 23-39-505(i), 23-
15 39-506(a)(3), and 23-39-506(c)(2) shall be charged for each full or partial
16 calendar quarter remaining in the calendar year on the date that the
17 application is filed with the commissioner.

18 (c)(1) All licenses in effect on December 31, 2007, that are scheduled
19 to expire during the 2008 calendar year shall continue until the stated
20 expiration date of the license, unless sooner terminated by surrender,
21 abandonment, change of employment, or order of the commissioner.

22 (2) Upon expiration or termination of a license for any reason:

23 (A) Any reissuance or renewal of the license shall be
24 accompanied by the fee set forth in subsection (b) of this section; and

25 (B) The license shall expire on December 31, 2008, unless
26 sooner terminated by surrender, abandonment, change of employment, or order
27 of the commissioner.

28
29 23-39-518. Cooperation with other regulatory agencies.

30 (a) The Securities Commissioner may:

31 (1) Enter into an arrangement, agreement, or other working
32 relationship with federal, state, or self-regulatory authorities, the
33 Conference of State Bank Supervisors, or a subsidiary of the Conference of
34 State Bank Supervisors to file and maintain documents in a multistate
35 automated licensing system or other central depository system;

36 (2) Waive or modify in whole or in part by rule or by order any

1 requirement of this subchapter if necessary to implement this section; and

2 (3) Establish new requirements under this subchapter to carry
3 out the purpose of this section.

4 (b) It is the intent of this section that the commissioner be provided
5 the authority to reduce duplication of filings, reduce administrative costs,
6 and establish uniform procedures, forms, and administration with other states
7 and federal authorities.

8 (c)(1) The commissioner may permit or require initial and renewal
9 registration filings required under this subchapter to be filed with the
10 Conference of State Bank Supervisors, a subsidiary entity owned by the
11 Conference of State Bank Supervisors, the National Association of Securities
12 Dealers, or another entity maintaining or operating a multistate automated
13 licensing system.

14 (2) The applicant or the licensee shall pay any fee charged for
15 the applicant or the licensee to participate in the automated licensing
16 system.

17 (d) The commissioner may accept uniform procedures and forms designed
18 to:

19 (1) Implement a multistate automated licensing system;

20 (2) Implement a uniform national mortgage lending regulatory
21 system; or

22 (3) Facilitate common practices and procedures among the states.

23 (e)(1) If the State of Arkansas joins a multistate automated licensing
24 system for mortgage industry participants pursuant to this section, the
25 commissioner may require a criminal background investigation of each
26 applicant seeking to become licensed under this subchapter as a mortgage
27 broker, mortgage banker, mortgage servicer, or loan officer.

28 (2) The criminal background investigation may include a
29 fingerprint examination and may be conducted by the Federal Bureau of
30 Investigation, the Department of Arkansas State Police, or an equivalent
31 state or federal law enforcement department or agency.

32 (3) The information obtained by the background investigation may
33 be used by the commissioner to determine the applicant's eligibility for
34 licensing under this subchapter.

35 (4) The fee required to perform the criminal background
36 investigation shall be borne by the license applicant.

