

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4  
5 By: Senator J. Dismang  
6

# A Bill

SENATE BILL 149

## For An Act To Be Entitled

8 AN ACT TO AMEND THE FAIR MORTGAGE LENDING ACT; TO  
9 MODIFY CERTAIN DEFINITIONS UNDER THE FAIR MORTGAGE  
10 LENDING ACT; TO CLARIFY THE QUALIFICATIONS FOR  
11 LICENSURE UNDER THE FAIR MORTGAGE LENDING ACT; TO  
12 PROVIDE A PROCESS TO ALLOW A LOAN OFFICER TO WORK  
13 REMOTELY; TO MODIFY THE PROCESS FOR A CHANGE OF NAME  
14 OR ADDRESS OF A LICENSEE UNDER THE FAIR MORTGAGE  
15 LENDING ACT; TO REQUIRE A LICENSEE TO ESTABLISH  
16 CYBERSECURITY POLICY AND PROCEDURE; AND FOR OTHER  
17 PURPOSES.

## Subtitle

20 TO AMEND THE FAIR MORTGAGE LENDING ACT.  
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23

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

26 SECTION 1. Arkansas Code § 23-39-502(3), concerning the definition of  
27 "branch office" under the Fair Mortgage Lending Act, is amended to read as  
28 follows:

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

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

36 (B) At which the licensee's name, advertising, promotional



1 materials, or signage suggests that mortgage loans are originated, solicited,  
2 accepted, negotiated, funded, or serviced or from which mortgage loan  
3 commitments or interest rate guarantee agreements are issued; or

4 (C) Which, due to the actions of any employee, associate,  
5 loan officer, or transitional loan officer of the licensee, may be construed  
6 by the public as a branch office of the licensee where mortgage loans are  
7 originated, solicited, accepted, negotiated, funded, or serviced or from  
8 which mortgage loan commitments or interest rate guarantee agreements are  
9 issued;

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

14 (13)(A) "Managing principal" means a person who meets the  
15 requirements of § 23-39-508 and who agrees to be primarily responsible for  
16 the operations of a licensed mortgage broker, mortgage banker, or mortgage  
17 servicer.

18 (B) "Managing principal" includes a qualifying individual;

19  
20 SECTION 3. Arkansas Code § 23-39-502(17), concerning the definition of  
21 "mortgage servicer" under the Fair Mortgage Lending Act, is amended to read  
22 as follows:

23 (17)(A) "Mortgage servicer" means a person that receives or has the  
24 right to receive from or on behalf of a borrower:

25 ~~(A)(i)~~ Funds or credits in payment for a mortgage  
26 loan; or

27 ~~(B)(ii)~~ The taxes or insurance associated with a  
28 mortgage loan.

29 (B) In the case of a home equity conversion mortgage or a  
30 reverse mortgage, "mortgage servicer" includes a person that makes a payment  
31 to the borrower;

32  
33 SECTION 4. Arkansas Code § 23-39-503(d)(1), concerning the license of  
34 a loan officer under the Fair Mortgage Lending Act, is amended to read as  
35 follows:

36 (d)(1)~~(A)~~ The license of a loan officer or a transitional loan officer

1 terminates when the loan officer's or transitional loan officer's employment  
 2 by or relationship with a mortgage broker or mortgage banker licensed under  
 3 this subchapter terminates.

4 ~~(B) A transitional loan officer license terminates when~~  
 5 ~~the transitional loan officer's employment by or relationship with a mortgage~~  
 6 ~~broker or mortgage banker licensed under this subchapter terminates.~~

8 SECTION 5. Arkansas Code § 23-39-505(a)(4), concerning the information  
 9 required by an applicant for a license under the Fair Mortgage Lending Act,  
 10 is amended to read as follows:

11 (4) In addition to any other information required under this  
 12 subchapter or rules adopted by the commissioner, the application shall  
 13 contain information the commissioner deems necessary and shall include the  
 14 following:

15 (A) For a license as a mortgage banker, mortgage broker,  
 16 or mortgage servicer:

17 (i) The applicant's name, address, and ~~Social~~  
 18 ~~Security number~~ federal employer identification number;

19 ~~(B)(ii)~~ The applicant's form of business and place  
 20 of organization, including without limitation:

21 ~~(i)(a)~~ A copy of the applicant's  
 22 organizational and governance documents; and

23 ~~(ii)(b)~~ If the applicant is a foreign entity,  
 24 a copy of the certificate of authority from the Secretary of State;

25 ~~(C)(i)(iii)~~ The applicant's proposed method of ~~and~~  
 26 ~~locations for~~ doing business, ~~if applicable~~ including whether the applicant  
 27 is proposing to be licensed as a mortgage broker, mortgage banker, or  
 28 mortgage servicer;

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

32 ~~(D)(i)(iv)~~ The applicant's proposed locations for  
 33 doing business;

34 (v) The qualifications, business history, and  
 35 financial condition of the applicant ~~and a managing principal of the~~  
 36 ~~applicant;~~ and

1                   (vi) A disclosure of a beneficial interest in an  
 2 affiliated industry business held by the applicant or by a principal,  
 3 officer, director, or employee of the applicant; and

4                   (B) For a license as a loan officer, transitional loan  
 5 officer, or managing principal of an applicant:

6                   (i) The applicant's name, address, and Social  
 7 Security number; and

8                   (ii) The qualifications, and business history, and  
 9 financial condition of the individual or managing principal of an applicant,  
 10 ~~of persons under subdivision (a)(4)(D)(i) of this section shall include~~  
 11 including:

12                                 (a) A description of an injunction or  
 13 administrative order, including a denial to engage in a regulated activity by  
 14 any state or federal authority that had jurisdiction over the applicant;

15                                 (b) A Disclosure of a conviction of a  
 16 misdemeanor involving fraudulent dealings or moral turpitude or relating to  
 17 any aspect of the mortgage industry, the securities industry, the insurance  
 18 industry, or any other activity pertaining to financial services;

19                                 (c) A Disclosure of a felony conviction; and

20                                 (d) Fingerprints for submission to the Federal  
 21 Bureau of Investigation and any governmental agency or entity authorized to  
 22 receive fingerprints for a state, national, and international criminal  
 23 background check; ~~and.~~

24                   ~~(E) A disclosure of a beneficial interest in an affiliated~~  
 25 ~~industry business held by the applicant or by a principal, officer, director,~~  
 26 ~~or employee of the applicant.~~

27  
 28           SECTION 6. Arkansas Code § 23-39-505(d), concerning the designation of  
 29 a managing principal under the Fair Mortgage Lending Act, is amended to read  
 30 as follows:

31                   (d) Each applicant for a license as a mortgage broker, mortgage  
 32 banker, or mortgage servicer shall identify in its application one (1) person  
 33 meeting the requirements of subsection (c) of this section to serve as the  
 34 applicant's managing principal.

35  
 36           SECTION 7. Arkansas Code § 23-39-505(h), concerning the qualifications

1 of a loan officer under the Fair Mortgage Lending Act, is repealed.

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

8

9 SECTION 8. Arkansas Code § 23-39-506(c), concerning the renewal of a  
10 loan officer license under the Fair Mortgage Lending Act, is amended to read  
11 as follows:

12 (c)(1) Each licensed loan officer wishing to renew a license shall:

13 ~~(1)(A)~~ File an application with the commissioner in the  
14 form prescribed by the commissioner between November 1 and December 31 of the  
15 calendar year;

16 ~~(2)(B)~~ Comply with the continuing education requirements  
17 as required by rules promulgated by the commissioner; and

18 ~~(3)(C)~~ Pay an annual renewal fee of fifty dollars  
19 (\$50.00).

20 (2) If an initial loan officer license is issued between  
21 November 1 through December 31 of the calendar year, the loan officer is not  
22 required to file a renewal application until the subsequent renewal period.  
23

24 SECTION 9. Arkansas Code § 23-39-509(d), concerning the business  
25 location of a mortgage broker, mortgage banker, or mortgage servicer under  
26 the Fair Mortgage Lending Act, is amended to read as follows:

27 (d)(1) A principal place of business or branch office from which a  
28 mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan  
29 activity or business shall be a physical address.

30 (2) Mortgage loan activity or business includes without  
31 limitation the address appearing on business cards, stationery, promotional  
32 materials, or advertising.

33 (3) The commissioner may by rule or order impose terms and  
34 conditions under which a loan officer may conduct mortgage loan activity or  
35 business from a location that is not licensed under this subchapter as a  
36 principal place of business or branch office.

1  
2 SECTION 10. Arkansas Code § 23-39-509(e), concerning notice of a  
3 change of address that is required by a mortgage broker, mortgage banker, or  
4 mortgage servicer under the Fair Mortgage Lending Act, is amended to read as  
5 follows:

6 (e)(1) A mortgage banker, mortgage broker, or mortgage servicer shall  
7 ~~report a change of address of the principal place of business, a branch~~  
8 ~~office, or a location in which the files pertaining to mortgage loan~~  
9 ~~transactions are maintained within thirty (30) days after the change not use~~  
10 ~~any name or address to conduct mortgage loan activity or business other than~~  
11 ~~the name and address specified on the license issued by the commissioner.~~

12 (2)~~(A)~~ A licensee that does not comply with subdivision ~~(e)(1)~~  
13 ~~of this section shall pay a late fee of two hundred fifty dollars (\$250)~~  
14 ~~mortgage broker, mortgage banker, or mortgage servicer may change the name of~~  
15 ~~the licensee or address of the principal place of business or branch office~~  
16 ~~specified on the most recent filing with the commissioner if:~~

17 (A)(i) At least thirty (30) calendar days before the  
18 change, the licensee files a notice of the change with the commissioner.

19 (ii) If necessary, the licensee shall provide a bond  
20 rider or endorsement, or addendum, as applicable, to the surety bond on file  
21 with the commissioner that reflects the new name or change of address of the  
22 licensee's principal place of business; and

23 (B) ~~All or part of the late fee may be waived by the~~  
24 ~~commissioner for good cause The commissioner does not disapprove the name~~  
25 ~~change or the change of address in writing or request additional information~~  
26 ~~within the thirty-day time frame described in subdivision (e)(2)(A)(i) of~~  
27 ~~this section.~~

28 ~~(3) The commissioner may revoke or suspend the license of a~~  
29 ~~mortgage broker, mortgage banker, or mortgage servicer who fails to pay a~~  
30 ~~late fee assessed under subdivision (e)(2) of this section.~~

31  
32 SECTION 11. Arkansas Code § 23-39-510, concerning the duties of a  
33 licensee under the Fair Mortgage Lending Act, is amended to add additional  
34 subsections to read as follows:

35 (d)(1) A mortgage broker, mortgage banker, or mortgage servicer  
36 licensed or required to be licensed under this subchapter shall establish,

1 implement, update, and enforce written physical security and cybersecurity  
2 policies and procedures reasonably designed to ensure the confidentiality,  
3 integrity, and availability of physical and electronic records and  
4 information.

5 (2) A policy or procedure described in subdivision (d)(1) of  
6 this section shall be tailored to the size and sophistication of the mortgage  
7 broker, mortgage banker, or mortgage servicer.

8 (3) The commissioner may impose additional conditions by rule or  
9 order to clarify the requirements of a policy or procedure described in  
10 subdivision (d)(1) of this section.

11 (e) A mortgage broker, mortgage banker, or mortgage servicer shall  
12 establish, enforce, and maintain policies and procedures reasonably designed  
13 to achieve compliance with this subchapter and any other state law or rule or  
14 federal law or regulation that is applicable to any business the licensee is  
15 authorized to conduct in this state.

16  
17 SECTION 12. Arkansas Code § 23-39-514(i)(2), concerning the authority  
18 of the Securities Commissioner to require an applicant or licensee to pay a  
19 fee for an examination under the Fair Mortgage Lending Act, is amended to  
20 read as follows:

21 (2) The applicant or licensee shall pay a fee for each  
22 examination under subdivision (i)(1) of this section, not to exceed one  
23 hundred fifty dollars (\$150) per examiner for each day or part of a day  
24 during which ~~any examiners are absent from the office of the commissioner for~~  
25 ~~the purpose of conducting the~~ an examination is conducted.