

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1981

5 By: Representative J. Edwards
6

For An Act To Be Entitled

8 AN ACT TO CLARIFY AND REGULATE THE FAIR MORTGAGE
9 LENDING ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO CLARIFY AND REGULATE THE FAIR MORTGAGE
12 LENDING ACT.
13

14
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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 23-39-502(9)(B)(iv), concerning the
20 definition of an "exempt person", is amended to read as follows:

21 (iv) A small-business investment corporation
22 licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et
23 seq., as it existed on ~~January 1, 2009~~ January 1, 2011;
24

25 SECTION 2. Arkansas Code § 23-39-502(9)(B)(v), concerning the
26 definition of an "exempt person", is amended to read as follows:

27 (v) A real estate investment trust as defined in 26
28 U.S.C. § 856, as it existed on ~~January 1, 2009~~ January 1, 2011;
29

30 SECTION 3. Arkansas Code § 23-39-502(11)(B)(iii), concerning the
31 definition of "loan officer", is amended to read as follows:

32 (iii) An individual who is solely involved in
33 extensions of credit relating to timeshare plans, as that term is defined in
34 11 U.S.C. § 101(53D), as it existed on ~~January 1, 2009~~ January 1, 2011;
35

36 SECTION 4. Arkansas Code § 23-39-502(16)(A), concerning the definition



1 of "mortgage loan", is amended to read as follows:

2 (A) A dwelling as defined in section 103(v) of the Truth
 3 in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on ~~January 1, 2009~~
 4 January 1, 2011; or

5
 6 SECTION 5. Arkansas Code § 23-39-505(a), concerning the issuance of a
 7 license, is amended to read as follows:

8 (a)(1) ~~Any~~ A person desiring to obtain a license as a loan officer,
 9 mortgage banker, mortgage broker, or mortgage servicer shall make written
 10 application for licensure to the Securities Commissioner in the form
 11 prescribed by the commissioner.

12 (2) The commissioner may approve by order a limited license with
 13 limitations, qualifications, or conditions.

14 (3) The application may require that the information be
 15 submitted in an electronic format.

16 ~~(3)~~(4) In addition to any other information required under this
 17 subchapter or ~~any~~ rules adopted by the commissioner, the application shall
 18 contain ~~any~~ information the commissioner deems necessary and shall include
 19 the following:

20 (A) The applicant's name, address, and social security
 21 number;

22 (B) The applicant's form of business and place of
 23 organization, ~~if applicable,~~ including without limitation:

24 (i) A certified copy of the applicant's
 25 organizational and governance documents; and

26 (ii) If the applicant is a foreign entity, a copy of
 27 the certificate of authority from the Secretary of State;

28 (C)(i) The applicant's proposed method of and locations
 29 for doing business, if applicable.

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

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

1 (ii) The qualifications and business history of
 2 persons under ~~subdivision (a)(3)(D)(i)~~ subdivision (a)(4)(D)(i) of this
 3 section shall include:

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

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

12 (c) ~~Any~~ A felony ~~convictions~~ conviction; and

13 (E) A disclosure of ~~any~~ a beneficial interest in an
 14 affiliated industry business held by the applicant or by a principal,
 15 officer, director, or employee of the applicant.

16
 17 SECTION 6. Arkansas Code § 23-39-505(b)(4)(B)(i), concerning an
 18 independent credit report, is amended to read as follows:

19 (i) An independent credit report from a consumer
 20 reporting agency described in section 603(p) of the Fair Credit Reporting
 21 Act, 15 U.S.C. § 1681 et seq., as it existed on ~~January 1, 2009~~ January 1,
 22 2011; and

23
 24 SECTION 7. Arkansas Code § 23-39-505(1)(2), concerning change of
 25 control, is amended to read as follows:

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

28 (A) Pay the commissioner a fee of one hundred dollars
 29 (\$100);

30 (B) Submit to the commissioner:

31 (i) ~~the~~ The information required under ~~subdivision~~
 32 ~~(a)(3)(D)~~ subdivision (a)(4)(D) of this section;

33 (ii) The proposed transaction documents; and

34 (iii) ~~any~~ Any other information deemed relevant by
 35 the commissioner; ~~and~~

36 (C) Submit financial statements according to subsection

1 (g) of this section, if a licensee holds a mortgage banker or mortgage
 2 servicer license; and

3 ~~(G)(D)~~ Certify that the licensee shall continue to meet
 4 the qualifications under this section.

5
 6 SECTION 8. Arkansas Code § 23-39-505(o), concerning issuance of a loan
 7 officer license, is amended to read as follows:

8 (o) ~~The commissioner shall not~~ To issue a loan officer license, ~~unless~~
 9 the commissioner ~~shall find~~ find that:

10 (1) The applicant has:

11 (A) Never had a loan officer license revoked in ~~any~~ a
 12 governmental jurisdiction;

13 (B) Not been found guilty of or pleaded guilty or nolo
 14 contendere to any offense described in § 23-39-514(a)(2)(C);

15 (C) Demonstrated sufficient financial responsibility,
 16 character, and general fitness to command the confidence of the community and
 17 to warrant a determination that the loan officer will operate honestly,
 18 fairly, and efficiently within the purposes of this subchapter; and

19 (D) Complied with the prelicensing education and testing
 20 requirements of subdivision (b)(3) of this section; and

21 (2) The applicant's employer has met the surety bond requirement
 22 of subdivision (f)(1) of this section.

23
 24 SECTION 9. Arkansas Code § 23-39-506(a), concerning renewal
 25 requirements, is amended to read as follows:

26 (a) ~~Each~~ A licensed mortgage broker, mortgage banker, and mortgage
 27 servicer wishing to renew a license shall:

28 (1) File a renewal application with the Securities Commissioner
 29 in the form prescribed by the commissioner between November 1 and December 31
 30 of the calendar year;

31 ~~(2)(A) Provide the commissioner with an annual report of~~
 32 ~~mortgage activity.~~

33 ~~(B) The commissioner may designate by rule or order the~~
 34 ~~information to be provided in the annual report;~~

35 ~~(3)~~ Present proof to the commissioner that the surety bond
 36 required in § 23-39-505(f)(1) is still in effect; and

1 ~~(4)~~(3) Pay the commissioner an annual renewal fee of three
2 hundred fifty dollars (\$350) for the licensee's principal place of business
3 and one hundred dollars (\$100) for each of the licensee's branch offices.
4

5 SECTION 10. Arkansas Code § 23-39-506(c)(1), concerning renewal
6 requirements, is amended to read as follows:

7 (1) File an application with the commissioner in the form
8 prescribed by the commissioner between November 1 and ~~December 1~~ December 31
9 of the calendar year;
10

11 SECTION 11. Arkansas Code § 23-39-509 is amended to read as follows:
12 23-39-509. Offices – Address changes – Location of records.

13 (a) ~~Each~~ A mortgage broker, mortgage banker, and mortgage servicer
14 shall maintain a principal place of business.

15 (b) ~~In addition, each~~ A mortgage broker, mortgage banker, and mortgage
16 servicer shall identify the location in which ~~all the licensee's~~ of the
17 books, records, and files pertaining to mortgage loan transactions ~~relating~~
18 ~~to borrowers in Arkansas~~ are maintained.

19 (c) The Securities Commissioner by rule may impose terms and
20 conditions under which the records and files shall be maintained, including
21 ~~whether~~ if the records must be maintained in ~~Arkansas~~ this state.

22 (d) A principal place of business or branch office from which a
23 mortgage broker, mortgage banker, or mortgage servicer conducts mortgage loan
24 activity or business shall be a physical address. Mortgage loan activity or
25 business includes without limitation the address appearing on business cards,
26 stationery, promotional materials, or advertising.

27 ~~(d)(1)(e)(1)~~ Each A mortgage banker, mortgage broker, or mortgage
28 servicer shall report ~~any~~ a change of address of the principal place of
29 business, ~~any~~ a branch office, or ~~any~~ a location in which the files
30 pertaining to mortgage loan transactions ~~relating to borrowers in Arkansas~~
31 are maintained within thirty (30) days after the change.

32 (2)(A) ~~Any~~ A licensee that does not comply with ~~subdivision~~
33 ~~(d)(1)~~ subdivision (e)(1) of this section shall pay a late fee of two hundred
34 fifty dollars (\$250).

35 (B) All or part of the late fee may be waived by the
36 commissioner for good cause.

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

5 ~~(e)~~(f) A mortgage broker, mortgage banker, or mortgage servicer that
 6 ceases to do business in this state shall:

7 (1) Notify the commissioner within thirty (30) days after the
 8 mortgage broker, mortgage banker, or mortgage servicer ceases to do business
 9 in this state that the mortgage broker, mortgage banker, or mortgage servicer
 10 has ceased to do business in this state; and

11 (2) Provide the commissioner the address where all records
 12 pertaining to loans made or serviced in this state will be maintained for the
 13 period of time required by this subchapter or ~~any~~ rule of the commissioner.
 14

15 SECTION 12. Arkansas Code § 23-39-510 is amended to read as follows:
 16 23-39-510. Licensee duties.

17 (a) In addition to duties imposed by other statutory or common law,
 18 ~~each a~~ person required to be licensed under this subchapter shall:

19 (1) Safeguard and account for any money received for, from, or
 20 on behalf of the borrower;

21 (2) Follow reasonable and lawful instructions from the borrower;

22 (3) Act with reasonable skill, care, and diligence;

23 (4) Make reasonable efforts with lenders with whom a mortgage
 24 broker regularly does business to secure a loan that is reasonably
 25 advantageous to the borrower considering all the circumstances, including the
 26 rates, charges, and repayment terms of the loan and the loan options for
 27 which the borrower qualifies with such lenders; ~~and~~

28 (5) Include the full name, address, and telephone number of the
 29 licensee in all solicitations and advertisements; and

30 (6)(A) Provide the Securities Commissioner with a quarterly
 31 report of mortgage activity.

32 (B) The commissioner may designate by rule or order the
 33 information to be provided in the quarterly report.

34 (b) The unique identifier of a person soliciting or originating a
 35 mortgage loan shall be clearly shown on all mortgage loan application forms,
 36 solicitations, advertisements, business cards, websites, and any other

1 document or medium established by rule or order of the ~~Securities~~
 2 ~~Commissioner~~ commissioner.

3
 4 SECTION 13. The introductory language of Arkansas Code § 23-39-513,
 5 concerning activities prohibited by licensees of the Fair Mortgage Lending
 6 Act, is amended to read as follows:

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

11
 12 SECTION 14. Arkansas Code § 23-39-513(8)(B), concerning prepayment
 13 penalties, is amended to read as follows.

14 (B) ~~Any~~ A penalty for prepayment under subdivision (8)(A)
 15 of this section made within the thirty-six-month period shall not exceed ~~the~~
 16 ~~greater of~~ any of the following amounts:

17 ~~(i) Any of the following amounts:~~

18 ~~(a)~~ (i) Three percent (3%) of the principal loan
 19 amount remaining on the date of prepayment if the prepayment is made within
 20 the first twelve-month period immediately following the date the loan was
 21 made;

22 ~~(b)~~ (ii) Two percent (2%) of the principal loan
 23 amount remaining on the date of prepayment if the prepayment is made within
 24 the second twelve-month period immediately following the date the loan was
 25 made; or

26 ~~(c)~~ (iii) One percent (1%) of the principal loan
 27 amount remaining on the date of prepayment if the prepayment is made within
 28 the third twelve-month period immediately following the date the loan was
 29 made; ~~or;~~

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

33
 34 SECTION 15. Arkansas Code § 23-39-513(11), concerning mortgage loan
 35 activity that violates other state and federal laws, is amended to read as
 36 follows:

1 (11) To broker, ~~or~~ make, or service a mortgage loan in violation
 2 of any federal law or any law of ~~Arkansas~~ this state;

3
 4 SECTION 16. Arkansas Code § 23-39-514 is amended to read as follows:
 5 23-39-514. Disciplinary authority.

6 (a) The Securities Commissioner by order may deny, suspend, revoke, or
 7 refuse to issue or renew a license of a licensee or applicant under this
 8 subchapter or may restrict or limit the activities relating to mortgage loans
 9 of any licensee or any person who owns an interest in or participates in the
 10 business of a licensee if the commissioner finds that:

11 (1) The order is in the public interest; and

12 (2) Any of the following circumstances apply to the applicant,
 13 licensee, or any partner, member, manager, officer, director, loan officer,
 14 managing principal, or any person occupying a similar status or performing
 15 similar functions, or any person directly or indirectly controlling the
 16 applicant or licensee. The person:

17 (A) Has filed an application for a license that as of its
 18 effective date or as of any date after filing contained any omission or
 19 statement that in light of the circumstances under which it was made is false
 20 or misleading with respect to any material fact;

21 (B) Has violated or failed to comply with any provision of
 22 this subchapter, any rule adopted by the commissioner, or any order of the
 23 commissioner issued under this subchapter or under Acts 1977, No. 806;

24 (C) Has pleaded guilty or nolo contendere to or has been
 25 found guilty in a domestic, foreign, or military court of:

26 (i) A felony;

27 (ii) An offense involving breach of trust, moral
 28 turpitude, money laundering, or fraudulent or dishonest dealing within the
 29 past ten (10) years; or

30 (iii) An offense involving mortgage lending, any
 31 aspect of the mortgage industry, or any aspect of the securities industry,
 32 the insurance industry, or any other activity pertaining to financial
 33 services;

34 (D) Is permanently or temporarily enjoined by any court of
 35 competent jurisdiction from engaging in or continuing any conduct or practice
 36 involving any aspect of the mortgage industry, the securities business, the

1 insurance business, or any other activity pertaining to financial services;

2 (E) Is the subject of an order of the commissioner:

3 (i) Denying, suspending, ~~or~~ revoking, restricting,
4 or limiting that person's license as a mortgage broker, mortgage banker,
5 mortgage servicer, loan officer, securities broker-dealer, securities agent,
6 investment adviser, or investment adviser representative; or

7 (ii) Directing that person to cease and desist from
8 ~~any~~ an activity regulated by the commissioner, including any order entered
9 pursuant to Acts 1977, No. 806;

10 (F) Is the subject of an order, including ~~any~~ a denial,
11 suspension, or revocation of authority to engage in a regulated activity by
12 any other state or federal authority to which the person is, has been, or has
13 sought to be subject, entered within the past five (5) years, including, ~~but~~
14 ~~not limited to,~~ without limitation the mortgage industry;

15 (G) Has been found by a court of competent jurisdiction to
16 have charged or collected any fee or rate of interest or made or brokered any
17 mortgage loan with terms or conditions or in a manner contrary to Arkansas
18 Constitution, Amendment 60;

19 (H) Does not meet the qualifications or the financial
20 responsibility, character, or general fitness requirements under § 23-39-505
21 or any bond or net worth requirements under this subchapter;

22 (I) Has been the executive officer or controlling
23 shareholder or owned a controlling interest in any mortgage broker, mortgage
24 banker, or mortgage servicer who has been subject to an order or injunction
25 described in subdivisions (a)(2)(D)-(G) of this section; or

26 (J)(i) Has failed to pay the proper filing fee, renewal
27 fee, or any late ~~fees~~ fee under this subchapter.

28 (ii) The commissioner may enter a denial order
29 against a person under this subsection when the person has failed to pay the
30 proper filing fee, renewal fee, or any late ~~fees~~ fee under this subchapter,
31 but the commissioner shall vacate the order when all fees have been paid.

32 (b)(1) The commissioner by order may impose a civil penalty upon a
33 licensee or any partner, officer, director, member, manager, or other person
34 occupying a similar status or performing a similar function on behalf of a
35 licensee for any violation of this subchapter, a rule under this subchapter,
36 or an order of the commissioner.

1 (2) The civil penalty shall not exceed ten thousand dollars
2 (\$10,000) for each violation under subdivision (b)(1) of this section by a
3 mortgage broker, mortgage banker, mortgage servicer, or loan officer.

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

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

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

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

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

22 (6) If a hearing is requested or ordered by the commissioner,
23 after notice of and opportunity for hearing, the commissioner may modify or
24 vacate the order or extend it until final determination.

25 (d) The commissioner may by order cancel a license or application if
26 the commissioner finds that a licensee or applicant for a license:

27 (1) Is no longer in existence;

28 (2) Has ceased to do business as a loan officer, mortgage
29 broker, mortgage banker, or mortgage servicer;

30 (3) Is subject to an adjudication of mental incompetence or to
31 the control of a committee, conservator, or guardian; or

32 (4) Cannot be located after a reasonable search.

33 ~~(d)(1)~~(e)(1) In addition to other powers under this subchapter, upon
34 finding that any action of a person is in violation of this subchapter, the
35 commissioner may summarily order the person to cease and desist from the
36 prohibited action.

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

5 (B) The person may contest the cease and desist order by
6 delivering a written request for a hearing to the commissioner within thirty
7 (30) days from the date on which notice of the order is sent by the
8 commissioner to the last known address of the person by first class mail,
9 postage prepaid.

10 (C) The commissioner shall schedule a hearing to be held
11 within a reasonable amount of time after the commissioner receives a timely
12 written request for a hearing.

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

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

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

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

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

27 (B) The commissioner may file an action requesting the
28 civil penalty under ~~subdivision (d)(3)(A)~~ subdivision (e)(3)(A) of this
29 section with the Pulaski County Circuit Court or any other court of competent
30 jurisdiction.

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

34 ~~(e)(f)~~ Unless otherwise provided, any action, hearing, or other
35 proceeding under this subchapter shall be governed by the Arkansas
36 Administrative Procedure Act, § 25-15-201 et seq.

1 ~~(f)~~(g) If the commissioner has grounds to believe that any person has
2 violated the provisions of this subchapter or that facts exist that would be
3 the basis for an order against a licensee or other person, the commissioner
4 or the commissioner's designee, at any time, may investigate or examine the
5 loans and business of the licensee and examine the books, accounts, records,
6 and files of any licensee or other person relating to the complaint or matter
7 under investigation.

8 ~~(g)~~~~(1)~~(h)(1) The commissioner or the commissioner's designee may:

9 (A) Administer oaths and affirmations;

10 (B) Issue subpoenas to require the attendance of and to
11 examine under oath all persons whose testimony the commissioner deems
12 relevant to the person's business; and

13 (C) Issue subpoenas to require the production of any
14 books, papers, correspondence, memoranda, agreements, or other documents or
15 records that the commissioner considers relevant or material to the inquiry.

16 (2)(A) In case of contumacy by or refusal to obey a subpoena
17 issued to any person, the Pulaski County Circuit Court, upon application by
18 the commissioner, may issue an order requiring the person to appear before
19 the commissioner or the officer designated by the commissioner, to produce
20 documentary evidence if so ordered, or to give evidence touching the matter
21 under investigation or in question.

22 (B) Failure to obey the order of the court may be punished
23 by the court as a contempt of court.

24 (3)(A) The assertion that the testimony or evidence before the
25 commissioner may tend to incriminate or subject a person to a penalty or
26 forfeiture shall not excuse the person from:

27 (i) Attending and testifying;

28 (ii) Producing any document or record; or

29 (iii) Obeying the subpoena of the commissioner or
30 any officer designated by the commissioner.

31 (B) However, no person may be prosecuted or subjected to
32 any penalty or forfeiture for or on account of any transaction, matter, or
33 thing concerning which the person is compelled, after claiming a privilege
34 against self-incrimination, to testify or produce evidence, except that the
35 person testifying is not exempt from prosecution and punishment for perjury
36 or contempt committed while testifying.

1 ~~(h)(1)~~(i)(1) From time to time and with or without cause, the
2 commissioner may conduct examinations of the books and records of any
3 applicant or licensee in order to determine the compliance with this
4 subchapter and any rules adopted under this subchapter.

5 (2) The applicant or licensee shall pay a fee for each
6 examination under ~~subdivision (h)(1)~~ subdivision (i)(1) of this section, not
7 to exceed one hundred fifty dollars (\$150) per examiner for each day or part
8 of a day during which any examiners are absent from the office of the
9 commissioner for the purpose of conducting the examination.

10 (3) In addition, the applicant or licensee ~~shall~~ may be required
11 to pay the actual hotel and traveling expenses of the examiner traveling to
12 and from the office of the commissioner while the examiner is conducting an
13 examination under ~~subdivision (h)(1)~~ subdivision (i)(1) of this section.

14 ~~(i)(j)~~ If the commissioner finds that the managing principal, branch
15 manager, or loan officer of a licensee had knowledge of, or reasonably should
16 have had knowledge of, or participated in any activity that results in the
17 entry of an order under this section suspending or withdrawing the license of
18 a licensee, the commissioner may prohibit the managing principal, branch
19 manager, or loan officer from serving as a managing principal, branch
20 manager, or loan officer for any period of time the commissioner deems
21 appropriate.

22 ~~(j)(k)~~ All orders shall contain written findings of fact and
23 conclusions of law. Except for orders entered under subdivisions (c)(1) and
24 ~~(d)(1)~~ (e)(1) of this section, before entering an order under this section,
25 the commissioner shall provide:

26 (1) Prior notice to the licensee or person who is the subject of
27 the order; and

28 (2) An opportunity for hearing.

29 ~~(k)(1)~~ This section does not prohibit or restrict the informal
30 disposition of a proceeding or allegations that might give rise to a
31 proceeding by stipulation, settlement, consent, or default in lieu of a
32 formal or informal hearing on the allegations or in lieu of the sanctions
33 authorized by this section.

34 ~~(l)(1)~~(m) If it appears upon sufficient grounds or evidence
35 satisfactory to the commissioner that any person or licensee has engaged in
36 or is about to engage in any act or practice that violates this subchapter or

1 any rule or regulation adopted or order issued under this subchapter or that
 2 the assets or capital of any licensee are impaired or the licensee's affairs
 3 are in an unsafe condition, the commissioner may:

4 (A) Refer the evidence which is available concerning
 5 violations of this subchapter or any rule, regulation, or order issued under
 6 this subchapter to the appropriate prosecuting attorney or regulatory agency,
 7 that with or without the reference may institute the appropriate criminal or
 8 regulatory proceedings under this subchapter; and

9 (B)(i) Summarily order the licensee or person to cease and
 10 desist from the act or practice under subdivisions (c)(1) and ~~(d)(1)~~ (e)(1)
 11 of this section and apply to the Pulaski County Circuit Court to enjoin the
 12 act or practice and to enforce compliance with this subchapter or any rule,
 13 regulation, or order issued under this subchapter, or both.

14 (ii) However, without issuing a cease and desist
 15 order, the commissioner may apply directly to the Pulaski County Circuit
 16 Court for injunctive or other relief.

17 (2) Upon proper showing, the court shall grant a permanent or
 18 temporary injunction, restraining order, or writ of mandamus.

19 (3) The commissioner may also seek and upon proper showing the
 20 appropriate court shall grant any other ancillary relief that may be in the
 21 public interest, including:

22 (A) The appointment of a receiver, temporary receiver, or
 23 conservator;

24 (B) A declaratory judgment;

25 (C) An accounting;

26 (D) Disgorgement;

27 (E) Assessment of a fine in an amount of not more than ten
 28 thousand dollars (\$10,000) for each violation; and

29 (F) Any other relief as may be appropriate in the public
 30 interest.

31 (4) The court may not require the commissioner to post a bond.
 32

33 SECTION 17. Arkansas Code § 23-39-517 is repealed.

34 ~~23-39-517. Transition.~~

35 ~~(a) Effective January 1, 2008, all licenses issued or renewed under~~
 36 ~~this subchapter shall expire on December 31 of each year, unless sooner~~

1 ~~terminated by surrender, abandonment, change of employment, or order of the~~
 2 ~~Securities Commissioner.~~

3 ~~(b) If a license is issued or renewed during the 2008 calendar year,~~
 4 ~~one fourth (1/4) of the fees prescribed in §§ 23-39-505(e), 23-39-505(i), 23-~~
 5 ~~39-506(a)(3), and 23-39-506(e)(2) shall be charged for each full or partial~~
 6 ~~calendar quarter remaining in the calendar year on the date that the~~
 7 ~~application is filed with the commissioner.~~

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

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

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

15 ~~(B) The license shall expire on December 31, 2008, unless~~
 16 ~~sooner terminated by surrender, abandonment, change of employment, or order~~
 17 ~~of the commissioner.~~

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