

State of Arkansas  
88th General Assembly  
Regular Session, 2011

# A Bill

HOUSE BILL 1981

By: Representative J. Edwards

## For An Act To Be Entitled

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

## Subtitle

TO CLARIFY AND REGULATE THE FAIR MORTGAGE  
LENDING ACT.

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

(B) Submit to the commissioner:

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

(ii) The proposed transaction documents; and

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

(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 ~~(C)~~(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 ~~finds~~ 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. Arkansas Code § 23-39-513(11), concerning mortgage loan activity that violates other state and federal laws, is amended to read as 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       ~~(1)-(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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20 **APPROVED: 03/31/2011**  
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