

1 State of Arkansas
2 84th General Assembly
3 Second Extraordinary Session, 2003
4

Call Item 6

A Bill

SENATE BILL 37

5 By: Senators Higginbotham, Altes, Horn, B. Johnson, Salmon, T. Smith, Wilkinson
6 By: Representatives Ferguson, Creekmore, P. Bookout, Cowling, Hardwick, Hutchinson, Matayo,
7 Rankin, Thyer
8
9

For An Act To Be Entitled

11 AN ACT TO AVOID REDUCTION OF REVENUE TO FUND THE
12 STATE EDUCATION SYSTEM BY AMENDING CERTAIN
13 SECTIONS OF THE FAIR MORTGAGE LENDING ACT TO
14 AVOID UNNECESSARY LIMITATIONS ON COMMERCIAL
15 LENDING WITHIN THE STATE WHICH SLOWS THE RECOVERY
16 AND GROWTH OF THE STATE'S ECONOMY; AND FOR OTHER
17 PURPOSES.
18

Subtitle

19 AN ACT TO AVOID REDUCTION OF REVENUE TO
20 FUND THE STATE EDUCATION SYSTEM BY
21 AMENDING CERTAIN SECTIONS OF THE FAIR
22 MORTGAGE LENDING ACT.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code 23-39-503(a)(2), regarding registration by
29 mortgage bankers and mortgage servicers which were exempt or held a valid
30 license as of December 31, 2003, is amended to read as follows:

31 (2) Each mortgage banker and mortgage servicer that was exempt
32 from the licensing requirements of §§ 23-39-101 - 23-39-309 or held a valid
33 license under §§ 23-39-101 - 23-39-309 as of December 31, 2003, shall have
34 one hundred twenty (120) days from the end of its fiscal year ~~ending in 2004~~
35 to register under this section.
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1 SECTION 2. Arkansas Code § 23-39-513 is amended to read as follows:

2 23-39-513. Prohibited activities. [Effective January 1, 2004.]

3 In addition to the other activities that are prohibited under this
4 subchapter, it is unlawful for any person in the course of any mortgage loan
5 transaction or activity:

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

10 (2) To improperly refuse to issue a satisfaction or release of a
11 mortgage;

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

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

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

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

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

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

31 (B) Is misleading or deceptive; or

32 (C) Constitutes a fraud upon any person; or

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

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

4 (i) Three percent (3%) of the principal loan amount
 5 remaining on the date of prepayment if the prepayment is made within the
 6 first twelve-month period immediately following the date the loan was made;
 7 two percent (2%) of the principal loan amount remaining on the date of
 8 prepayment if the prepayment is made within the second twelve-month period
 9 immediately following the date the loan was made; one percent (1%) of the
 10 principal loan amount remaining on the date of prepayment if the prepayment
 11 is made within the third twelve-month period immediately following the date
 12 the loan was made; or

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

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

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

22 (i) Consider additional appropriate property
 23 information;

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

26 (iii) Correct errors in the appraisal report;

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

32 (11) To broker or make a mortgage loan in violation of any
 33 federal law or any law of Arkansas; and

34 (12) To engage in practices that are dishonest or unethical in
 35 the mortgage industry.

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1 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
2 General Assembly of the State of Arkansas that as a result of the Arkansas
3 Supreme Court decision, Lake View Sch. Dist. No. 25 v. Huckabee, 351 Ark. 31,
4 91 S.W.3d 472 (2002), additional revenue is necessary for the improvement of
5 public schools, to provide all Arkansas children an adequate education, and
6 to equalize funding for schools and teachers; that without additional
7 revenue, the state will be unable to fulfill its constitutional duty to
8 provide an adequate and equitable education to Arkansas children; that
9 certain unintended and unnecessary restrictions on commercial lending in the
10 state will occur as a result of the passage of Act 554 of the 84th General
11 Assembly, Regular Session, which becomes effective January 1, 2004, and such
12 unintended and unnecessary restrictions will slow the growth of and constrict
13 the economy of the state, and thus reduce state revenues, and that this act
14 is immediately necessary as it will avoid reduction of needed revenue for the
15 support and improvement of public schools. Therefore, an emergency is
16 declared to exist and this act being immediately necessary for the
17 preservation of the public peace, health, and safety shall become effective
18 on:

19 (1) The date of its approval by the Governor;

20 (2) If the bill is neither approved nor vetoed by the Governor,
21 the expiration of the period of time during which the Governor may veto the
22 bill; or

23 (3) If the bill is vetoed by the Governor and the veto is
24 overridden, the date the last house overrides the veto.

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27 **APPROVED: 12/31/2003**
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