

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Ross**

A Bill

SENATE BILL 75

For An Act To Be Entitled

8 "AN ACT CONCERNING BROKERS OF ADVANCE FEE LOANS; TO DEFINE
9 PROHIBITED ACTS; TO DEFINE REMEDIES FOR VIOLATIONS; AND
10 FOR OTHER PURPOSES."

Subtitle

13 "AN ACT TO PROHIBIT ADVANCE FEE LOAN BROKERAGE."

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

17 *SECTION 1. Definitions. The definitions set forth in this provision*
18 *are for purposes of this Act and are not intended to alter the definitions*
19 *which apply to the Mortgage Loan Company and Loan Broker Act as set forth in*
20 *Arkansas Code §23-39-102. For purposes of this Act, unless the context*
21 *otherwise requires:*

22 (1) "Advance fee" means any consideration which is assessed or
23 collected, prior to the closing of a loan, by a loan broker.

24 (2) "Affiliate" means any person who directly or indirectly, through
25 one (1) or more intermediaries, controls, is controlled by, or is under common
26 control with another person.

27 (3) "Borrower" means a person obtaining or desiring to obtain a loan of
28 money, a credit card, or a line of credit.

29 (4) (A) "Loan Broker" means any person, not exempt under paragraph (B),
30 who:

31 (i) For or in expectation of consideration arranges,
32 attempts to arrange, or offers to fund a loan of money, a credit card, or a
33 line of credit;

1 (ii) For or in expectation of consideration, assists or
2 advises a borrower in obtaining or attempting to obtain a loan of money, a
3 credit card, a line of credit, or related guarantee, enhancement, or
4 collateral of any kind or nature;

5 (iii) Acts for or on behalf of a loan broker for the
6 purposes of soliciting borrowers; or

7 (iv) Holds himself/herself out as a loan broker.

8 (B) The following persons or entities shall not be considered
9 loan brokers under paragraph (A):

10 (i) If licensed by and subject to regulation or supervision
11 of any agency, commission, or department of the United States or of the State
12 of Arkansas, and if engaged in the permitted activity granted pursuant to
13 their license, permit, or registration or with express written authority for
14 the activity from the regulatory or supervising agency, a: (a) bank, (b)
15 savings and loan association, (c) trust company, (d) credit union, (e)
16 investment company, (f) industrial loan company, (g) securities broker-dealer,
17 agent, or investment adviser, (h) real estate broker or sales associate, (i)
18 attorney, (j) Federal Housing Administration or Veterans_ Administration
19 approved lender, (k) credit card company, (l) mortgage loan company, (m)
20 mortgage loan broker, (n) public utility, (o) insurance company or agent, or
21 (p) motor vehicle manufacturer, or dealer. Subsidiaries of licensed or
22 chartered consumer loan companies, banks, or savings and loan associations are
23 not loan brokers.

24 (ii) A person extending or arranging credit, or offering to
25 extend or arrange credit, to a partnership or corporation exclusively for
26 commercial or business purposes.

27 (iii) A depository financial institution chartered or
28 licensed by an agency, commission, or department of another state, if the
29 funds on deposit with the institution are insured by the Federal Deposit
30 Insurance Corporation;

31 (iv) An affiliate of a person listed in subparagraph (ii);
32 or

33 (v) A bona fide seller or lessor of goods, services, or
34 interests in real estate in a transaction in which the seller or lessor
35 extends, arranges, or offers to extend or arrange credit that is to be used

1 exclusively for financing the purchase or lease or for services performed by
2 an independent third party directly related to the purchase or lease. A
3 transaction shall not be exempt under this subparagraph if the purchaser or
4 lessee receives, or is to receive, a cash advance or consolidation loan in
5 addition to the financing.

6 (5) "Principal" means any officer, director, partner, joint venturer,
7 branch manager, or other person with similar managerial or supervisory
8 responsibilities for a loan broker.

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10 SECTION 2. Prohibited acts. It shall be unlawful for a loan broker to:

11 (1) Assess or collect an advance fee from a borrower to provide
12 services as a loan broker;

13 (2) Make or use unfair, false, misleading, or deceptive representations
14 or to omit any material fact in the offer or sale of the services of a loan
15 broker, or to engage, directly or indirectly, in any act that operates or
16 would operate as an unfair, false, misleading, or deceptive representation in
17 its business dealings.

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19 SECTION 3. Liability of loan broker_s principal. A principal of a loan
20 broker shall be liable under this Act to the same extent as the loan broker
21 himself for any actions on behalf of the loan broker, or the loan broker_s
22 agents, or employees, which violate this Act.

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24 SECTION 4. Remedies. (a) A violation of any of the provisions of this
25 Act shall constitute an unfair or deceptive act or practice as defined by the
26 Deceptive Trade Practices Act, Arkansas Code Annotate § 4-88-101 et seq. All
27 remedies, penalties, and authority granted to the Attorney General under the
28 Deceptive Trade Practices Act shall be available to him for the enforcement of
29 this Act.

30 (b) Any borrower who suffers a loss of money or property as a result of
31 a violation of this Act may bring an action against the loan broker, its
32 principals, employees, or agents, and against the surety bond, or trust
33 account, if any, of the loan broker. The action shall be brought in the
34 county in which the solicitation was made, and recovery may be awarded by the
35 court in an amount of up to three (3) times the actual damages. The court may

1 award to the prevailing party, in addition to the relief provided in this
2 section, reasonable attorney_s fees and costs.

3 (c) A permanent injunction, judgment, or order of the court obtained by
4 the Attorney General pursuant to this section, shall be prima facie evidence
5 in an action brought under this subsection that the defendant used or employed
6 a method, act, or practice declared unlawful by this Act.

7 (d) A person bringing an action under this subsection shall bring the
8 action within one (1) year after any action brought by the Attorney General
9 has been terminated, or two (2) years after the violation occurred, whichever
10 is later.

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12 SECTION 5. Remedy nonexclusive. Nothing in this Act limits the rights
13 or remedies which are otherwise available to a consumer under any other law.

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15 SECTION 6. All provisions of this act of a general and permanent
16 nature are amendatory to the Arkansas Code or 1987 Annotated and Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

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19 SECTION 7. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 8. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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/s/ Senator Ross

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As Engrossed: 2/9/93

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