

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

A Bill

ACT 140 OF 1993
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 are for purposes***
18 ***of this Act and are not intended to alter the definitions which apply to the Mortgage Loan***
19 ***Company and Loan Broker Act as set forth in Arkansas Code §23-39-102. For purposes of***
20 ***this Act, unless the context otherwise requires:***

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

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

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

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

28 **(i) For or in expectation of consideration arranges, attempts to arrange,**
29 **or offers to fund a loan of money, a credit card, or a line of credit;**

30 **(ii) For or in expectation of consideration, assists or advises a borrower**
31 **in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related**
32 **guarantee, enhancement, or collateral of any kind or nature;**

33 **(iii) Acts for or on behalf of a loan broker for the purposes of soliciting**
34 **borrowers; or**

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

1 **(B) The following persons or entities shall not be considered loan brokers**
2 **under paragraph (A):**

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

14 **(ii) A person extending or arranging credit, or offering to extend or**
15 **arrange credit, to a partnership or corporation exclusively for commercial or business**
16 **purposes.**

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

20 **(iv) An affiliate of a person listed in subparagraph (ii); or**

21 **(v) A bona fide seller or lessor of goods, services, or interests in real**
22 **estate in a transaction in which the seller or lessor extends, arranges, or offers to extend or**
23 **arrange credit that is to be used exclusively for financing the purchase or lease or for services**
24 **performed by an independent third party directly related to the purchase or lease. A**
25 **transaction shall not be exempt under this subparagraph if the purchaser or lessee receives, or**
26 **is to receive, a cash advance or consolidation loan in addition to the financing.**

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

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

31 **(1) Assess or collect an advance fee from a borrower to provide services as a loan**
32 **broker;**

33 **(2) Make or use unfair, false, misleading, or deceptive representations or to omit any**
34 **material fact in the offer or sale of the services of a loan broker, or to engage, directly or**
35 **indirectly, in any act that operates or would operate as an unfair, false, misleading, or deceptive**

1 representation in its business dealings.

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

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

12 **(b) Any borrower who suffers a loss of money or property as a result of a violation of**
13 **this Act may bring an action against the loan broker, its principals, employees, or agents, and**
14 **against the surety bond, or trust account, if any, of the loan broker. The action shall be**
15 **brought in the county in which the solicitation was made, and recovery may be awarded by the**
16 **court in an amount of up to three (3) times the actual damages. The court may award to the**
17 **prevailing party, in addition to the relief provided in this section, reasonable attorney_s fees**
18 **and costs.**

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

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

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

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

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34 **SECTION 7. If any provision of this act or the application thereof to any person or**
35 **circumstance is held invalid, such invalidity shall not affect other provisions or applications of**

1 **the act which can be given effect without the invalid provision or application, and to this end**
2 **the provisions of this act are declared to be severable.**

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

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/s/ Senator Ross

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APPROVED: 2/17/93

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