

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Wilkinson**

A Bill

ACT 598 OF 1995
HOUSE BILL 1706

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 23-39-401 AND
9 23-39-405 TO DEFINE THE OCCURRENCE OF CLOSING A LOAN; TO
10 ALLOW FOR THE ATTORNEY GENERAL TO RECOVER A BORROWER'S
11 RESTITUTION; AND FOR OTHER PURPOSES."

Subtitle

14 "TO AMEND THE ADVANCE FEE LOAN BROKERAGE
15 ACT"

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

19 SECTION 1. Arkansas Code Annotated § 23-39-401 is amended to read as
20 follows:

21 "23-39-401. Definitions.

22 For purposes of this subchapter, unless the context otherwise requires:

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

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

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

30 (4) (A) Loan broker means any person, not exempt under subdivision

31 (4) (B) of this section, who:

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

35 (ii) For or in expectation of consideration, assists or
36 advises a borrower in obtaining or attempting to obtain a loan of money, a

1 credit card, a line of credit, or related guarantee, enhancement, or
2 collateral of any kind or nature;

3 (iii) Acts for or on behalf of a loan broker for the
4 purpose of soliciting borrowers; or

5 (iv) Holds himself or herself out as a loan broker.

6 (B) The following persons or entities shall not be considered
7 loan brokers under subdivision (4) (A) of this section:

8 (i) If licensed by and subject to regulation or supervision
9 of any agency, commission, or department of the United States or of the State
10 of Arkansas, and if engaged in the permitted activity granted pursuant to
11 their license, permit, or registration or with express written authority for
12 the activity from the regulatory or supervising agency:

13 (a) Bank;

14 (b) Savings and loan association;

15 (c) Trust company;

16 (d) Credit union;

17 (e) Investment company;

18 (f) Industrial loan company;

19 (g) Securities broker-dealer, agent, or investment
20 adviser;

21 (h) Real estate broker or sales associate;

22 (i) Attorney;

23 (j) Federal Housing Administration or Department of
24 Veterans Affairs approved lender;

25 (k) Credit card company;

26 (l) Mortgage loan company;

27 (m) Mortgage loan broker;

28 (n) Public utility;

29 (o) Insurance company or agent; or

30 (p) Motor vehicle manufacturer or dealer;

31 (ii) Subsidiaries of licensed or chartered consumer loan
32 companies, banks, or savings and loan associations are not loan brokers;

33 (iii) A person extending or arranging credit, or offering
34 to extend or arrange credit, to a partnership or corporation exclusively for
35 commercial or business purposes;

1 (iv) A depository financial institution chartered or
2 licensed by an agency, commission, or department of another state, if the
3 funds on deposit with the institution are insured by the Federal Deposit
4 Insurance Corporation;

5 (v) An affiliate of a person listed in subdivision
6 (4) (B) (iii) of this section; or

7 (vi) A bona fide seller or lessor of goods, services, or
8 interests in real estate in a transaction in which the seller or lessor
9 extends, arranges, or offers to extend or arrange credit that is to be used
10 exclusively for financing the purchase or lease or for services performed by
11 an independent third party directly related to the purchase or lease. A
12 transaction shall not be exempt under this subdivision (4) (B) (vi) if the
13 purchaser or lessee receives, or is to receive, a cash advance or
14 consolidation loan in addition to the financing;

15 (5) Principal means any officer, director, partner, joint venturer,
16 branch manager, or other person with similar managerial or supervisory
17 responsibilities for a loan broker.

18 (6) Closing of a loan means completion of the final steps of the
19 transaction, except for the paying of consideration for loan services
20 provided, whereby the borrower has full access to and use of the benefits of
21 the loan of money, credit card, or line of credit."

22

23 SECTION 2. Arkansas Code Annotated § 23-39-405 is amended to read as
24 follows:

25 "23-39-405. Remedies and penalties.

26 (a) A violation of any of the provisions of this subchapter shall
27 constitute an unfair or deceptive act or practice as defined by the Deceptive
28 Trade Practices Act, § 4-88-101 et seq. All remedies, penalties, and
29 authority granted to the Attorney General under the Deceptive Trade Practices
30 Act, § 4-88-101 et seq., shall be available to him for the enforcement of this
31 subchapter. In any action brought by the Attorney General pursuant to this
32 subsection, the Attorney General may also recover on behalf of borrowers the
33 amounts specified under subsection (b) of this section.

34 (b) A borrower may bring an action against the loan broker, its
35 principals, employees, or agents, and against the surety bond, or trust

1 account, if any, of the loan broker as a result of a violation of this
2 subchapter. The action shall be brought in the county in which the
3 solicitation was made, and the court shall award:

- 4 (1) an amount of three (3) times the amount paid by the borrower
- 5 for the loan services or one thousand dollars (\$1,000), whichever is greater;
- 6 (2) incidental and consequential damages; and
- 7 (3) costs and reasonable attorney_s fees.

8 (c) A permanent injunction, judgment, or order of the court obtained by
9 the Attorney General pursuant to this section shall be prima facie evidence in
10 an action brought under this section that the defendant used or employed a
11 method, act, or practice declared unlawful by this subchapter.

12 (d) A person bringing an action under this section shall bring the
13 action within one (1) year after any action brought by the Attorney General
14 has been terminated or two (2) years after the violation occurred, whichever
15 is later.

16 (e) Any person who knowingly commits a practice as defined unlawful by
17 this subchapter shall be guilty of a Class D felony and, upon conviction in
18 the circuit court of any county in this state in which any portion of the
19 unlawful practice occurred, shall be subject to punishment accordingly. If
20 the person is a corporation, the penalties of this subsection also apply to a
21 director, officer, or individual agent of a corporation who knowingly
22 authorizes, order, or performs an act in violation of this subchapter without
23 regard to penalties imposed on the corporation."

24

25 SECTION 3. All provisions of this act of a general and permanent nature
26 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
27 Revision Commission shall incorporate the same in the Code.

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29 SECTION 4. If any provision of this act or the application thereof to
30 any person or circumstance is held invalid, such invalidity shall not affect
31 other provisions or applications of the act which can be given effect without
32 the invalid provision or application, and to this end the provisions of this
33 act are declared to be severable.

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35 SECTION 5. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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APPROVED: 3-13-95