

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative Wilkinson

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## 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."

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### Subtitle

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"TO AMEND THE ADVANCE FEE LOAN BROKERAGE  
15 ACT"

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

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

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"23-39-401. Definitions.

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

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(1) Advance fee means any consideration which is assessed or

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collected, prior to the closing of a loan, by a loan broker;

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(2) Affiliate means any person who directly or indirectly, through

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one (1) or more intermediaries, controls, is controlled by, or is under

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common control with another person;

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(3) Borrower means a person obtaining or desiring to obtain a loan

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of money, a credit card, or a line of credit;

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

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

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(i) For or in expectation of consideration arranges,

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attempts to arrange, or offers to fund a loan of money, a credit card, or a

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line of credit;

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(ii) For or in expectation of consideration, assists or

1 advises a borrower in obtaining or attempting to obtain a loan of money, a  
2 credit card, a line of credit, or related guarantee, enhancement, or  
3 collateral of any kind or nature;

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

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

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

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

14 (a) Bank;

15 (b) Savings and loan association;

16 (c) Trust company;

17 (d) Credit union;

18 (e) Investment company;

19 (f) Industrial loan company;

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

22 (h) Real estate broker or sales associate;

23 (i) Attorney;

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

26 (k) Credit card company;

27 (l) Mortgage loan company;

28 (m) Mortgage loan broker;

29 (n) Public utility;

30 (o) Insurance company or agent; or

31 (p) Motor vehicle manufacturer or dealer;

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

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

1 commercial or business purposes;

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

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

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

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

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

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

26 "23-39-405. Remedies and penalties.

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

35 (b) A borrower may bring an action against the loan broker, its

1 principals, employees, or agents, and against the surety bond, or trust  
2 account, if any, of the loan broker as a result of a violation of this  
3 subchapter. The action shall be brought in the county in which the  
4 solicitation was made, and the court shall award:

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

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

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

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

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

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

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1           SECTION 5. All laws and parts of laws in conflict with this act are  
2 hereby repealed.

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