

103^D CONGRESS
1ST SESSION

H. R. 1495

To amend title 18, United States Code, to prohibit certain practices by unregulated loan brokers.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1993

Mr. SCHUMER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit certain practices by unregulated loan brokers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advance Fee Loan
5 Scam Prevention Act of 1993”.

6 **SEC. 2. TITLE 18 AMENDMENT.**

7 (a) IN GENERAL.—Chapter 47 of title 18, United
8 States Code, is amended by adding at the end the
9 following:

1 **“§ 1033. Loan broker advance fees and fraud**

2 “(a) It shall be unlawful for a loan broker—

3 “(1) to solicit an advance fee in connection
4 with—

5 “(A) arranging or attempting to arrange
6 consumer credit;

7 “(B) offering to find for any individual
8 consumer credit; or

9 “(C) advising any individual as to how to
10 obtain consumer credit;

11 “(2) to make or use any false or misleading
12 representations or omit any material fact in the
13 offer or sale of the service of a loan broker; or

14 “(3) to engage, directly or indirectly, in any
15 conduct that operates or would operate as fraud or
16 deception upon any person in connection with the
17 offer or sale of the services of a loan broker, not-
18 withstanding the absence of reliance by the person
19 to whom the loan broker’s services are offered or
20 sold.

21 “(b) Whoever knowingly violates subsection (a) of
22 this section shall be fined under this title or imprisoned
23 for not more than 5 years, or both

24 “(c) Any violation of subsection (a) shall—

25 “(1) be treated as a violation of a rule of the
26 Federal Trade Commission issued pursuant to sec-

1 tion 18(a)(1)(B) of the Federal Trade Commission
2 Act; and

3 “(2) be subject to enforcement by the Federal
4 Trade Commission under the enforcement and pen-
5 alty provisions applicable to violations of such rules.

6 “(d) For purposes of section 3005(a) of title 39, a
7 violation of subsection (a) of this section by any person
8 shall constitute prima facie evidence that such person is
9 engaged in conducting a scheme or device for obtaining
10 money or property through the mail by means of false rep-
11 resentations.

12 “(e) For purposes of this section—

13 “(1) the term “loan broker”—

14 “(A) means any person who, in or affect-
15 ing interstate or foreign commerce—

16 “(i) for, or in expectation of, a consid-
17 eration, arranges or attempts to arrange or
18 offers to find for any individual, consumer
19 credit;

20 “(ii) for, or in expectation of, a con-
21 sideration, assists or advises an individual
22 on obtaining, or attempting to obtain,
23 consumer credit; or

24 “(iii) acts or purports to act for, or on
25 behalf of, a person described in clause (i)

1 or (ii) of this subparagraph, for the pur-
2 pose of soliciting individuals interested in
3 obtaining consumer credit; and

4 “(B) does not include—

5 “(i) any insured depository institution
6 (as defined in section 3(c)(2) of the Fed-
7 eral Deposit Insurance Act), any insured
8 credit union (as defined in section 101(7)
9 of the Federal Credit Union Act), or any
10 depository institution which is eligible for
11 deposit insurance under the Federal De-
12 posit Insurance Act or the Federal Credit
13 Union Act and has deposit insurance cov-
14 erage provided by any State;

15 “(ii) any lender approved by the Fed-
16 eral Housing Administration, Farmers
17 Home Administration, or Department of
18 Veterans Affairs;

19 “(iii) any seller or servicer of mort-
20 gages approved by the Federal National
21 Mortgage Association or the Federal Home
22 Loan Mortgage Corporation; or

23 “(iv) any consumer finance company,
24 retail installment sales company, securities
25 broker or dealer, real estate broker or real

1 estate salesperson, attorney, credit card
2 company, installment loan licensee, mort-
3 gage broker or lender, or insurance com-
4 pany if such person is—

5 “(I) licensed by and subject to
6 regulation or supervision by any agen-
7 cy of the United States or by the
8 State in which the person seeking to
9 utilize the services of the loan broker
10 resides; and

11 “(II) is acting within the scope of
12 that license or regulation;

13 “(2) the term “advance fee”—

14 “(A) means any fee (including any advance
15 payment of interest or other fees for any exten-
16 sion of consumer credit) which is assessed or
17 collected by a loan broker from any person
18 seeking the consumer credit before the exten-
19 sion of such credit; and

20 “(B) does not include—

21 “(i) any amount that the loan broker
22 can demonstrate is collected solely for the
23 purpose of payment to unaffiliated, third
24 party vendors for actual expenses incurred

1 and payable before the extension of any
2 consumer credit; or

3 “(ii) any application fee or other
4 charge assessed or collected—

5 “(I) by a retail seller of property
6 that is primarily for personal, family,
7 or household purposes or automobiles;

8 “(II) in connection with a
9 consumer credit transaction in which
10 a purchase money security interest
11 arising under an installment sales
12 contract (or any equivalent consensual
13 security interest) is created or re-
14 tained against any such property or
15 automobile being sold by the retail
16 seller to the person seeking the exten-
17 sion of credit; or

18 “(III) in connection with a resi-
19 dential real estate transaction that is
20 secured by a first lien on the property,
21 including a purchase, refinancing, or
22 consolidation of an extension of credit;
23 and

1 “(3) the terms “consumer” and “credit” have
2 the meanings given to such terms in section 103 of
3 the Truth in Lending Act.”.

4 (b) CIVIL FORFEITURE.—Section 981(a)(1)(C) of
5 title 18, United States Code, is amended—

6 (1) by striking “title or a violation” and insert-
7 ing “title, a violation”; and

8 (2) by inserting “, or a violation of section
9 1033 of this title” before the period.

10 (c) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 47 of title 18, United States
12 Code, is amended by adding at the end the following:

“1033. Loan broker advance fees and fraud.”.

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