

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1179

To amend the Federal Trade Commission Act to provide authorization of appropriations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 29 (legislative day, JUNE 22), 1993

Mr. BRYAN (for himself, Mr. GORTON, and Mr. DANFORTH) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Federal Trade Commission Act to provide authorization of appropriations, and for other purposes.

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 “Federal Trade Com-  
5        mission Act Amendments of 1993”.

6        **SEC. 2. UNFAIR METHODS OF COMPETITION.**

7        Section 5 of the Federal Trade Commission Act (15  
8        U.S.C. 45) is amended by adding at the end the following  
9        new subsection:

1       “(n) The Commission shall not have any authority  
2 to find a method of competition to be an unfair method  
3 of competition under subsection (a)(1) if, in any action  
4 under the Sherman Act (15 U.S.C. 1 et seq.), such method  
5 of competition would be held to constitute State action.”.

6 **SEC. 3. AGRICULTURAL COOPERATIVES.**

7       The Federal Trade Commission Act (15 U.S.C. 41  
8 et seq.) is amended by redesignating sections 24 and 25  
9 as sections 26 and 27, respectively, and by inserting imme-  
10 diately after section 23 the following new section:

11       “SEC. 24. (a) The Commission shall not have any au-  
12 thority to conduct any study, investigation, or prosecution  
13 of any agricultural cooperative for any conduct which, be-  
14 cause of the provisions of the Act entitled ‘An Act to au-  
15 thorize association of producers of agricultural products’,  
16 approved February 18, 1922 (7 U.S.C. 291 et seq., com-  
17 monly known as the Capper-Volstead Act), is not a viola-  
18 tion of any of the antitrust Acts or this Act.

19       “(b) The Commission shall not have any authority  
20 to conduct any study or investigation of any agricultural  
21 marketing orders.”.

22 **SEC. 4. COMPENSATION IN PROCEEDINGS.**

23       (a) REPEAL.—Section 18(h) of the Federal Trade  
24 Commission Act (15 U.S.C. 57a(h)) is repealed, and sub-

1 sections (i), (j), and (k) of section 18 are redesignated as  
2 subsections (h), (i), and (j), respectively.

3 (b) CONFORMING AMENDMENT.—Section 18(a)(1) of  
4 the Federal Trade Commission Act (15 U.S.C. 57a(a)(1))  
5 is amended by striking “subsection (i)” and inserting in  
6 lieu thereof “subsection (h)”.

7 **SEC. 5. KNOWING VIOLATIONS OF ORDERS.**

8 (a) EXCEPTION FOR CONSENT ORDERS.—Section  
9 5(m)(1)(B) of the Federal Trade Commission Act (15  
10 U.S.C. 45(m)(1)(B)) is amended by inserting “, other  
11 than a consent order,” immediately after “order” the first  
12 time it appears.

13 (b) REVIEW OF DETERMINATIONS OF LAW.—Section  
14 5(m)(2) of the Federal Trade Commission Act (15 U.S.C.  
15 45(m)(2)) is amended by adding at the end of the follow-  
16 ing: “Upon request of any party to such an action against  
17 such defendant, the court shall also review the determina-  
18 tion of law made by the Commission in the proceeding  
19 under subsection (b) that the act or practice which was  
20 the subject of such proceeding constituted an unfair or  
21 deceptive act or practice in violation of subsection (a).”.

22 **SEC. 6. PREVALENCE OF UNLAWFUL ACTS OR PRACTICES.**

23 Section 18(b) of the Federal Trade Commission Act  
24 (15 U.S.C. 57a(b)) is amended by adding at the end the  
25 following new paragraph:

1       “(3) The Commission shall issue a notice of proposed  
2 rulemaking pursuant to paragraph (1)(A) only where it  
3 has reason to believe that the unfair or deceptive acts or  
4 practices which are the subject of the proposed rulemaking  
5 are prevalent. The Commission shall make a determina-  
6 tion that unfair or deceptive acts or practices are prevalent  
7 under this paragraph only if it has issued cease and desist  
8 orders regarding such acts or practices, or any other infor-  
9 mation available to the Commission indicates a pattern of  
10 unfair or deceptive acts or practices.”.

11 **SEC. 7. EFFECTIVE DATE OF ORDERS.**

12       (a) ORDERS SUBJECT TO PETITION FOR REVIEW.—  
13 Section 5(g)(2) of the Federal Trade Commission Act (15  
14 U.S.C. 45(g)(2)) is amended to read as follows:

15       “(2) Except as to any order provision subject to  
16 paragraph (4), upon the sixtieth day after such  
17 order is served, if a petition for review has been duly  
18 filed; except that any such order may be stayed, in  
19 whole or in part and subject to such conditions as  
20 may be appropriate, by—

21               “(A) the Commission;

22               “(B) an appropriate court of appeals of  
23 the United States, if (i) a petition for review of  
24 such order is pending in such court, and (ii) an  
25 application for such a stay was previously sub-

1           mitted to the Commission and the Commission,  
2           within the thirty-day period beginning on the  
3           date the application was received by the Com-  
4           mission, either denied the application or did not  
5           grant or deny the application; or

6                   “(C) the Supreme Court, if an applicable  
7                   petition for certiorari is pending; or”.

8           (b) ORDERS SUBJECT TO SECTIONS 5(m)(1)(B) AND  
9   19(a)(2) OF FTCA.—Section 5(g)(3) of the Federal  
10 Trade Commission Act (15 U.S.C. 45(g)(3)) is amended  
11 to read as follows:

12                   “(3) For purposes of subsection (m)(1)(B) and  
13                   of section 19 (a)(2), if a petition for review of the  
14                   order of the Commission has been filed—

15                           “(A) upon the expiration of the time al-  
16                           lowed for filing a petition for certiorari, if the  
17                           order of the Commission has been affirmed or  
18                           the petition for review has been dismissed by  
19                           the court of appeals and no petition for certio-  
20                           rari has been duly filed;

21                           “(B) upon the denial of a petition for cer-  
22                           tiorari, if the order of the Commission has been  
23                           affirmed or the petition for review has been dis-  
24                           missed by the court of appeals; or

1           “(C) upon the expiration of thirty days  
2           from the date of issuance of a mandate of the  
3           Supreme Court directing that the order of the  
4           Commission be affirmed or the petition for re-  
5           view be dismissed; or”.

6           (c) DIVESTITURE ORDERS.—Section 5(g)(4) of the  
7           Federal Trade Commission Act (15 U.S.C. 45(g)(4)) is  
8           amended to read as follows:

9           “(4) In the case of an order provision requiring  
10          a person, partnership, or corporation to divest itself  
11          of stock, other share capital, or assets, if a petition  
12          for review of such order of the Commission has been  
13          filed—

14                 “(A) upon the expiration of the time al-  
15                 lowed for filing a petition for certiorari, if the  
16                 order of the Commission has been affirmed or  
17                 the petition for review has been dismissed by  
18                 the court of appeals and no petition for certio-  
19                 rari has been duly filed;

20                 “(B) upon the denial of a petition for cer-  
21                 tiorari, if the order of the Commission has been  
22                 affirmed or the petition for review has been dis-  
23                 missed by the court of appeals; or

24                 “(C) upon the expiration of thirty days  
25                 from the date of issuance of a mandate of the

1 Supreme Court directing that the order of the  
2 Commission be affirmed or the petition for re-  
3 view be dismissed.”.

4 **SEC. 8. CIVIL INVESTIGATIVE DEMANDS.**

5 (a) DEFINITIONS.—Section 20(a) of the Federal  
6 Trade Commission Act (15 U.S.C. 57b–1(a)) is amend-  
7 ed—

8 (1) in paragraph (2), by inserting “, or in any  
9 antitrust violations” immediately after “section  
10 5(a)(1)”;

11 (2) in paragraph (3), by inserting “or any pro-  
12 visions relating to antitrust violations” immediately  
13 after “section 5(a)(1)”;

14 (3) in paragraph (7), by inserting “, or any  
15 antitrust violation” immediately after “section  
16 5(a)(1)”;

17 (4) by adding at the end the following new  
18 paragraph:

19 “(8) The term ‘antitrust violation’ means any  
20 unfair method of competition (within the meaning of  
21 section 5(a)(1)); any violation of the Clayton Act;  
22 any violation of any other Federal statute that pro-  
23 hibits, or makes available to the Commission a civil  
24 remedy with respect to, any restraint upon or mo-  
25 nopolization of interstate or foreign trade or com-

1 merce; or any activity in preparation for a merger,  
2 acquisition, joint venture, or similar transaction,  
3 which if consummated, may result in such an unfair  
4 method of competition or violation.”.

5 (b) ISSUANCE OF DEMAND.—(1) Section 20 (c)(1) of  
6 the Federal Trade Commission Act (15 U.S.C. 57b-1  
7 (c)(1)) is amended—

8 (A) by inserting “or tangible things” imme-  
9 diately after “documentary material” the first place  
10 it appears;

11 (B) by inserting “or to antitrust violations,”  
12 immediately after “section 5 (a)(1) ,” ; and

13 (C) by inserting “to submit such tangible  
14 things,” immediately after “copying or reproduc-  
15 tion,”.

16 (2) Section 20(c) of the Federal Trade Commission  
17 Act (15 U.S.C. 57b-1 (c)) is amended—

18 (A) by redesignating paragraphs (4), (5), (6),  
19 (7), (8), (9), (10), (11), and (12) as paragraphs (5),  
20 (6), (7), (8), (9), (10), (11), (13), and (14), respec-  
21 tively;

22 (B) by inserting immediately after paragraph  
23 (3) the following new paragraph:

24 “(4) Each civil investigative demand for the submis-  
25 sion of tangible things shall—

1           “(A) describe each class of tangible things to be  
2           submitted under the demand with such definiteness  
3           and certainty as to permit such things to be fairly  
4           identified;

5           “(B) prescribe a return date or dates which will  
6           provide a reasonable period of time within which the  
7           things so demanded may be assembled and submit-  
8           ted; and

9           “(C) identify the custodian to whom such  
10          things shall be submitted,”; and

11          (C) by inserting immediately after paragraph  
12          (11), as so redesignated, the following new para-  
13          graph:

14          “(12) The submission of tangible things in response  
15          to a civil investigative demand shall be made under a  
16          sworn certificate, in such form as the demand designates,  
17          by the person to whom the demand is directed or, if not  
18          a natural person, by any person having knowledge of the  
19          facts and circumstances relating to such production, to the  
20          effect that all of the physical evidence required by the de-  
21          mand and in the possession, custody, or control of the per-  
22          son to whom the demand is directed has been submitted  
23          to the custodian.”.

24          (c) APPLICABILITY OF SECTION 20 OF FTCA.—Sec-  
25          tion 20(j)(1) of the Federal Trade Commission Act (15

1 U.S.C. 57b-1(j)(1)) is amended by inserting immediately  
2 before the semicolon the following: “, any proceeding  
3 under section 11(b) of the Clayton Act (15 U.S.C. 21(b)),  
4 or any adjudicative proceeding under any other provision  
5 of law”.

6 **SEC. 9. COMMISSION CUSTODY OF TANGIBLE THINGS.**

7 Section 21 of the Federal Trade Commission Act (15  
8 U.S.C. 57b-2) is amended—

9 (1) in subsection (a)(1), by inserting “tangible  
10 things,” immediately after “documentary material,”;

11 (2) in subsection (b)(1), by inserting “, tangible  
12 thing,” immediately after “document”;

13 (3) in subsection (b)(2)(A), by inserting “tan-  
14 gible things,” immediately after “material,”;

15 (4) in subsection (b)(3)—

16 (A) in subparagraph (A), by inserting  
17 “tangible things,” immediately after “documen-  
18 tary material,”;

19 (B) in subparagraph (B), by inserting “,  
20 and may make tangible things available,” im-  
21 mediately after “oral testimony”; and by insert-  
22 ing “things,” immediately after “such mate-  
23 rial,”;

1 (C) in subparagraph (C), by inserting  
2 “tangible things,” immediately after “documen-  
3 tary material,”; and

4 (D) in subparagraph (D), by inserting “,  
5 tangible things,” immediately after “documen-  
6 tary material”;

7 (5) in subsection (b)(4), by inserting “tangible  
8 things,” immediately after “documentary material,”;

9 (6) in subsection (b)(5), by inserting “tangible  
10 things,” immediately after “documentary material,”;

11 (7) in subsection (b)(6)—

12 (A) by inserting immediately after the first  
13 sentence the following new sentence: “The cus-  
14 todian of any tangible things may make such  
15 things available for inspection to such persons  
16 on the same basis.”; and

17 (B) by inserting “results of inspections of  
18 tangible things,” immediately after “such docu-  
19 mentary material,”; and

20 (8) in subsection (b)(7), by inserting “tangible  
21 things,” immediately after “documentary material,”.

22 **SEC. 10. DEFINITION OF UNFAIR ACTS OR PRACTICES.**

23 Section 5 of the Federal Trade Commission Act (15  
24 U.S.C. 45), as amended by section 2 of this Act, is further

1 amended by adding at the end the following new sub-  
2 section:

3 “(o) The Commission shall have no authority under  
4 this section or section 18 to declare unlawful an act or  
5 practice on the grounds that such act or practice is unfair  
6 unless the act or practice causes or is likely to cause sub-  
7 stantial injury to consumers which is not reasonably avoid-  
8 able by consumers themselves and not outweighed by  
9 countervailing benefits to consumers or to competition.”.

10 **SEC. 11. COMMERCIAL ADVERTISING.**

11 Section 18(h) of the Federal Trade Commission Act  
12 (15 U.S.C. 57a(h)), as so redesignated in section 4(a) of  
13 this Act, is amended by adding at the end the following:  
14 “The Commission shall have no authority under this sec-  
15 tion to initiate any new rulemaking proceeding which is  
16 intended to or may result in the promulgation of any rule  
17 by the Commission which prohibits or otherwise regulates  
18 any commercial advertising on the basis of a determina-  
19 tion by the Commission that such commercial advertising  
20 constitutes an unfair act or practice in or affecting  
21 commerce.”.

22 **SEC. 12. VENUE AND SERVICE OF PROCESS.**

23 (a) **AUTHORITY TO SERVE CERTAIN PERSONS.—**(1)  
24 Section 13(a) of the Federal Trade Commission Act (15  
25 U.S.C. 53(a)) is amended by striking the last sentence and

1 inserting in lieu thereof the following: “Any suit may be  
2 brought where such person, partnership, or corporation re-  
3 sides or transacts business, or wherever venue is proper  
4 under section 1391 of title 28, United States Code. In  
5 such a suit, the court may, if the court determines that  
6 the interests of justice require that any other person, part-  
7 nership, or corporation should be a party in such suit,  
8 cause such other person, partnership, or corporation to be  
9 summoned without regard to whether it resides or trans-  
10 acts business in the district in which the suit is brought.  
11 In any suit under this section, process may be served on  
12 any person, partnership, or corporation wherever it may  
13 be found.”.

14 (2) Section 13(b) of the Federal Trade Commission  
15 Act (15 U.S.C. 53(b)) is amended by striking the last sen-  
16 tence and inserting in lieu thereof the following: “Any suit  
17 may be brought where such person, partnership, or cor-  
18 poration resides or transacts business, or wherever venue  
19 is proper under section 1391 of title 28, United States  
20 Code. In such a suit, the court may, if the court deter-  
21 mines that the interests of justice require that any other  
22 person, partnership, or corporation should be a party in  
23 such suit, cause such other person, partnership, or cor-  
24 poration to be summoned without regard to whether it re-  
25 sides or transacts business in the district in which the suit

1 is brought. In any suit under this section, process may  
2 be served on any person, partnership, or corporation wher-  
3 ever it may be found.”.

4 (b) PROCEDURES FOR SERVING PROCESS.—Section  
5 13 of the Federal Trade Commission Act (15 U.S.C. 53)  
6 is amended—

7 (1) by redesignating subsection (c) as sub-  
8 section (d); and

9 (2) by inserting immediately after subsection  
10 (b) the following new subsection:

11 “(c) Any process of the Commission under this sec-  
12 tion may be served by any person duly authorized by the  
13 Commission—

14 “(1) by delivering a copy of such process to the  
15 person to be served, to a member of the partnership  
16 to be served, or to the president, secretary, or other  
17 executive officer or a director of the corporation to  
18 be served;

19 “(2) by leaving a copy of such process at the  
20 residence or the principal office or place of business  
21 of such person, partnership, or corporation; or

22 “(3) by mailing a copy of such process by reg-  
23 istered mail or certified mail addressed to such per-  
24 son, partnership, or corporation at his, or her, or its

1 residence, principal office, or principal place or busi-  
2 ness.

3 The verified return by the person serving such process set-  
4 ting forth the manner of such service shall be proof of  
5 the same.”.

6 **SEC. 13. REPORT ON RESALE PRICE MAINTENANCE.**

7 (a) REPORT TO CONGRESS.—The Federal Trade  
8 Commission shall submit to the Committee on Commerce,  
9 Science, and Transportation of the Senate and to the  
10 Committee on Energy and Commerce of the House of  
11 Representatives the information specified in subsection (b)  
12 every six months during each of the fiscal years 1994,  
13 1995, and 1996. Each such report shall contain such in-  
14 formation for the period since the last submission under  
15 this section.

16 (b) CONTENTS OF REPORT.—Each such report shall  
17 list and described, with respect to instances in which re-  
18 sale price maintenance has been suspected or alleged—

19 (1) each complaint made, orally or in writing,  
20 to the offices of the Commission;

21 (2) each preliminary investigation opened or  
22 closed at the Commission;

23 (3) each formal investigation opened or closed  
24 at the Commission;

1 (4) each recommendation for the issuance of a  
2 compliant forwarded by the staff to the Commission;

3 (5) each complaint issued by the Commission  
4 pursuant to section 5 of the Federal Trade Commis-  
5 sion Act (15 U.S.C. 45);

6 (6) each opinion and order entered by the Com-  
7 mission;

8 (7) each consent agreement accepted provision-  
9 ally or finally by the Commission;

10 (8) each request for modification of an out-  
11 standing Commission order filed with the Commis-  
12 sion;

13 (9) each recommendation by staff pertaining to  
14 a request for modification of an outstanding Com-  
15 mission order; and

16 (10) each disposition by the Commission of a  
17 request for modification of an outstanding Commis-  
18 sion order.

19 Such report shall include the sum total of matters in each  
20 category specified in paragraphs (1) through (10), and  
21 copies of all such consent agreements and complaints exe-  
22 cuted by the Commission. Where a matter has been closed  
23 or terminated, the report shall include a statement of the  
24 reasons for that disposition. The description required  
25 under this subsection shall be as complete as possible but

1 shall not reveal the identity of persons or companies mak-  
2 ing the complaint or those complained about or those sub-  
3 ject to investigation that have not otherwise been made  
4 public.

5 **SEC. 14. REPORT ON PREDATORY PRICING PRACTICES.**

6 (a) REPORT TO CONGRESS.—The Federal Trade  
7 Commission shall submit to the Committee on Commerce,  
8 Science, and Transportation of the Senate and to the  
9 Committee on Energy and Commerce of the House of  
10 Representatives the information specified in subsection (b)  
11 every six months during each of the fiscal years 1994,  
12 1995, and 1996. Each such report shall contain such in-  
13 formation for the period since the last submission under  
14 this section.

15 (b) CONTENTS OF REPORT.—Each such report shall  
16 list and describe, with respect to instances in which preda-  
17 tory pricing practices have been suspected or alleged—

18 (1) each complaint made, orally or in writing,  
19 to the offices of the Commission;

20 (2) each preliminary investigation opened or  
21 closed at the Commission;

22 (3) each formal investigation opened or closed  
23 at the Commission;

24 (4) each recommendation for the issuance of a  
25 complaint forwarded by the staff to the Commission;

1 (5) each complaint issued by the Commission;

2 (6) each opinion and other entered by the Com-  
3 mission;

4 (7) each consent agreement accepted provision-  
5 ally or finally by the Commission;

6 (8) each request for modification of an out-  
7 standing Commission order filed with the Commis-  
8 sion;

9 (9) each recommendation by staff pertaining to  
10 a request for modification of an outstanding Com-  
11 mission order; and

12 (10) each disposition by the Commission of a  
13 request for modification of an outstanding Commis-  
14 sion order.

15 Such report shall include copies of all such consent agree-  
16 ments and complaints executed by the Commission re-  
17 ferred to in such report. Where a matter has been closed  
18 or terminated, the report shall include a statement of the  
19 reasons for that disposition. The descriptions required  
20 under this subsection shall be as complete as possible but  
21 shall not reveal the identity of persons or companies mak-  
22 ing the complaint or those complained about or those sub-  
23 ject to investigation that have not otherwise been made  
24 public. The report shall include any evaluation by the

1 Commission of the potential impacts of predatory pricing  
2 upon businesses (including small businesses).

3 **SEC. 15. INTERVENTION BY COMMISSION IN CERTAIN PRO-**  
4 **CEEDINGS.**

5 (a) LIMITATION ON USE OF AUTHORIZED FUNDS.—  
6 The Federal Trade Commission shall not have any author-  
7 ity to use any funds which are authorized to be appro-  
8 priated to carry out the Federal Trade Commission Act  
9 (15 U.S.C. 41 et seq.) for fiscal years 1994, 1995, and  
10 1996, for the purpose of submitting statements to, appear-  
11 ing before, or intervening in the proceedings of, any Fed-  
12 eral or State agency or State legislative body concerning  
13 proposed rules or legislation that the agency or legislative  
14 body is considering unless the Commission advises the  
15 Committee on Commerce, Science, and Transportation of  
16 the Senate and the Committee on Energy and Commerce  
17 of the House of Representatives regarding such action as  
18 soon as possible.

19 (b) CONTENTS OF NOTICE TO CONGRESS.—The no-  
20 tice required in subsection (a) shall include the name of  
21 the agency or legislator involved, the date of such action,  
22 and a concise statement regarding the nature and purpose  
23 of such action.

1 **SEC. 16. RESOURCE ALLOCATION STUDY.**

2 The Federal Trade Commission shall conduct an  
3 evaluation of the level of its personnel resources and the  
4 manner in which such resources are allocated. The Com-  
5 mission shall study—

6 (1) whether overall resources at the Commission  
7 are adequate to fulfill the Commission's responsibil-  
8 ities in the areas of competition and consumer pro-  
9 tection;

10 (2) the distribution of personnel to individual  
11 offices of commissioners, departments, bureaus, and  
12 other units within the Commission, and whether the  
13 current allocation of personnel most efficiently en-  
14 ables the Commission to fulfill its statutory man-  
15 date;

16 (3) the number of personnel in supervisory posi-  
17 tions, contrasted with those personnel in non-  
18 supervisory positions; and

19 (4) whether the amount of workyears devoted to  
20 research activities should be increased, and what re-  
21 sults (if any) such an increase would produce.

22 The Commission shall transmit the results of such study,  
23 together with any recommendations that the Commission  
24 determines appropriate, to the Committee on Commerce,  
25 Science, and Transportation of the Senate and the Com-  
26 mittee on Energy and Commerce of the House of Rep-

1 representatives not later than six months after the date of  
2 enactment of this Act.

3 **SEC. 17. FEDERAL-STATE COOPERATION.**

4 The Federal Trade Commission shall review its statu-  
5 tory responsibilities to identify those matters within its ju-  
6 risdiction where Federal enforcement is particularly nec-  
7 essary or desirable, and those areas that might more effec-  
8 tively be enforced at the State or local level. In identifying  
9 such areas, the Commission shall—

10 (1) consider the resources available to the Com-  
11 mission and the States, as well as particular rules  
12 that have been promulgated by the Commission;

13 (2) consult with the attorneys general of the  
14 States, representatives of consumers and industry,  
15 and other interested parties; and

16 (3) consider such other issues as will result in  
17 more efficient implementation of the statutory re-  
18 sponsibilities of the Commission.

19 Not later than six months after the date of enactment of  
20 this Act, the Federal Trade Commission shall transmit to  
21 the Committee on Commerce, Science, and Transportation  
22 of the Senate and the Committee on Energy and Com-  
23 merce of the House of Representatives the information  
24 identified in paragraphs (1) through (3), together with

1 specific recommendations for methods of achieving greater  
2 cooperation between the Commission and the States.

3 **SEC. 18. CREDIT REPAIR ORGANIZATIONS AND LOAN BRO-**  
4 **KERS.**

5 (a) DEFINITIONS.—In this section, the following  
6 terms apply:

7 (1)(A) The term “advance fee” means any fee  
8 (including any advance payment of interest or other  
9 fees for any extension of consumer credit) which is  
10 assessed or collected by a loan broker from any per-  
11 son seeking the consumer credit before the extension  
12 of such credit.

13 (B) The term “advance fee” does not include—

14 (i) any amount that the loan broker can  
15 demonstrate is collected solely for the purpose  
16 of payment to unaffiliated, third party vendors  
17 for actual expenses incurred and payable before  
18 the extension of any consumer credit; or

19 (ii) any application fee or other charge as-  
20 sessed or collected—

21 (I) by a retail seller of property that  
22 is primarily for personal, family, or house-  
23 hold purposes or automobiles; and

24 (II) in connection with a consumer  
25 credit transaction in which a purchase

1 money security interest arising under an  
2 installment sales contract (or any equiva-  
3 lent consensual security interest) is created  
4 or retained against any such property or  
5 automobile being sold by the retail seller to  
6 the person seeking the extension of credit.

7 (2) The terms “consumer” and “credit” have  
8 the meanings given to such terms in section 103 of  
9 the Truth in Lending Act (15 U.S.C. 1602).

10 (3)(A) The term “credit repair organization”  
11 means any person who sells, provides, or performs,  
12 or represents that such person can or will sell, pro-  
13 vide, or perform, in return for the payment of money  
14 or other valuable consideration, a service for the ex-  
15 press or implied purpose of—

16 (i) improving a consumer’s credit record,  
17 history, or rating; or

18 (ii) providing advice or assistance to a  
19 consumer with regard to the consumer’s credit  
20 record, history, or rating.

21 (B) The term “credit repair organization” does  
22 not include—

23 (i) a depository institution whose deposits  
24 are insured by the Federal Deposit Insurance  
25 Corporation, the Federal Savings and Loan In-

1 insurance Corporation, or the National Credit  
2 Union Administration Board, or a depository  
3 institution chartered by a State;

4 (ii) any nonprofit organization exempt  
5 from taxation under section 501(c)(3) of the In-  
6 ternal Revenue Code;

7 (iii) a licensed real estate broker acting  
8 within the course and scope of that license;

9 (iv) a licensed attorney at law rendering  
10 services within the course and scope of that li-  
11 cense;

12 (v) any broker-dealer registered with the  
13 Securities and Exchange Commission or the  
14 Commodity Futures Trading Commission act-  
15 ing within the scope of the Securities and Ex-  
16 change Commission or the Commodity Futures  
17 Trading Commission regulations;

18 (vi) any consumer reporting agency acting  
19 within the course and scope of this title; or

20 (vii) any debt collector as defined in sec-  
21 tion 803 of the Fair Debt Collection Practices  
22 Act (15 U.S.C. 1692a), acting within the course  
23 and scope of that Act.

24 (4)(A) The term “loan broker” means any per-  
25 son who—

1 (i) for, or in expectation of, a consider-  
2 ation, arranges or attempts to arrange or offers  
3 to find for any individual, consumer credit;

4 (ii) for, or in expectation of, a consider-  
5 ation, assists or advises an individual on obtain-  
6 ing, or attempting to obtain, consumer credit;  
7 or

8 (iii) acts or purports to act for, or on be-  
9 half of, a loan broker for the purpose of solicit-  
10 ing individuals interested in obtaining consumer  
11 credit.

12 (B) The term “loan broker” does not include—

13 (i) any insured depository institution (as  
14 defined in section 3(c)(2) of the Federal De-  
15 posit Insurance Act; 12 U.S.C. 1813(c)(2)), any  
16 insured credit union (as defined in section  
17 101(7) of the Federal Credit Union Act; 12  
18 U.S.C. 1752(7)), or any depository institution  
19 which is eligible for deposit insurance under the  
20 Federal Deposit Insurance Act or the Federal  
21 Credit Union Act and has deposit insurance  
22 coverage provided by any State;

23 (ii) any lender approved by the Federal  
24 Housing Administration, Farmers Home Ad-

1           ministration, or Department of Veterans Af-  
2           fairs;

3           (iii) any seller or servicer of mortgages ap-  
4           proved by the Federal National Mortgage Asso-  
5           ciation or the Federal Home Loan Mortgage  
6           Corporation; or

7           (iv) any consumer finance company, retail  
8           installment sales company, securities broker or  
9           dealer, real estate broker or real estate sales-  
10          person, attorney, credit card company, install-  
11          ment loan licensee, mortgage broker or lender,  
12          or insurance company if such person is—

13                 (I) licensed by and subject to regula-  
14                 tion or supervision by any agency of the  
15                 United States or by the State in which the  
16                 person seeking to utilize the services of the  
17                 loan broker resides; and

18                 (II) is acting within the scope of that  
19                 license or regulation.

20          (b) PROHIBITED PRACTICES OF CREDIT REPAIR OR-  
21          GANIZATIONS.—A credit repair organization shall not  
22          charge or receive any money or other valuable consider-  
23          ation prior to completion of the services that the credit  
24          repair organization has agreed to perform for the  
25          consumer and that are described in subsection (a)(1).

1 (c) PROHIBITED PRACTICES OF LOAN BROKERS.—

2 (1) No loan broker may receive an advance fee in connec-  
3 tion with—

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

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

8 (C) advising any individual as to how to obtain  
9 consumer credit.

10 (2) No loan broker may—

11 (A) make or use any false or misleading rep-  
12 resentations or omit any material fact in the offer  
13 or sale of the service of a loan broker; or

14 (B) engage, directly or indirectly, in any act  
15 that operates or would operate as fraud or deception  
16 upon any person in connection with the offer or sale  
17 of the services of a loan broker, notwithstanding the  
18 absence of reliance by the person to whom the loan  
19 broker's services are offered or sold.

20 (d) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
21 SION.—Any violation of this section shall—

22 (1) be treated as a violation of a rule of the  
23 Federal Trade Commission issued pursuant to sec-  
24 tion 18(a)(1)(B) of the Federal Trade Commission  
25 Act (15 U.S.C. 57a(a)(1)(B)); and

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

4           (e) CRIMINAL PENALTY.—(1) Whoever knowingly  
5 violates subsection (b) or (c) shall be fined under title 18,  
6 United States Code, imprisoned for not more than five  
7 years, or both.

8           (2) Section 981(a)(1)(C) of title 18, United States  
9 Code, is amended—

10           (A) by striking “title or a violation” and insert-  
11 ing in lieu thereof “title, a violation”; and

12           (B) by inserting “, or a violation of section 18  
13 (b) or (c) of the Federal Trade Commission Act  
14 Amendments of 1993” immediately before the pe-  
15 riod.

16           (3) For purposes of section 3005(a) of title 39, Unit-  
17 ed States Code, a violation of subsection (b) or (c) of this  
18 section by any person shall constitute prima facie evidence  
19 that such person is engaged in conducting a scheme or  
20 device for obtaining money or property through the mail  
21 by means of false representations.

22 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

23           Section 25 of the Federal Trade Commission Act, as  
24 so redesignated by section 3 of this Act, is amended—

25           (1) by striking “and” after “1981;”; and

1           (2) by inserting immediately before the period  
2           at the end the following: “; not to exceed  
3           \$88,000,000 for the fiscal year ending September  
4           30, 1994; not to exceed \$92,000,000 for the fiscal  
5           year ending September 30, 1995; and not to exceed  
6           \$95,000,000 for the fiscal year ending September  
7           30, 1996, and such additional sums for the fiscal  
8           years ending September 30, 1994, and September  
9           30, 1995, as may be necessary for increases in sal-  
10          ary, pay, and other employee benefits as authorized  
11          by law”.

12 **SEC. 20. EFFECTIVE DATE; APPLICABILITY.**

13           (a) IN GENERAL.—Except as provided in subsections  
14           (b), (c), (d), (e), and (f), the provisions of this Act shall  
15           take effect on the date of enactment of this Act.

16           (b) APPLICABILITY OF SECTION 2.—The amendment  
17           made by section 2 of this Act shall apply only with respect  
18           to proceedings under section 5 of the Federal Trade Com-  
19           mission Act (15 U.S.C. 45) after the date of enactment  
20           of this Act. This amendment shall not be construed to af-  
21           fect in any manner a cease and desist order which was  
22           issued, or a rule which was promulgated, before the date  
23           of enactment of this Act. This amendment shall not be  
24           construed to affect in any manner a cease and desist order  
25           issued after the date of enactment of this Act, if such

1 order was issued pursuant to remand from a court of ap-  
2 peals or the Supreme Court of an order issued by the Fed-  
3 eral Trade Commission before the date of enactment of  
4 this Act.

5 (c) APPLICABILITY OF SECTIONS 6 AND 11.—The  
6 amendments made by sections 6 and 11 of this Act shall  
7 apply only to rulemaking proceedings initiated after the  
8 date of enactment of this Act. These amendments shall  
9 not be construed to affect in any manner a rulemaking  
10 proceeding which was initiated before the date of enact-  
11 ment of this Act.

12 (d) APPLICABILITY OF SECTION 7.—The amend-  
13 ments made by section 7 of this Act shall apply only with  
14 respect to cease and desist orders issued under section 5  
15 of the Federal Trade Commission Act (15 U.S.C. 45) after  
16 the date of enactment of this Act. These amendments shall  
17 not be construed to affect in any manner a cease and de-  
18 sist order which was issued before the date of enactment  
19 of this Act.

20 (e) APPLICABILITY OF SECTIONS 8 AND 9.—The  
21 amendments made by sections 8 and 9 of this Act shall  
22 apply only with respect to compulsory process issued after  
23 the date of enactment of this Act.

24 (f) APPLICABILITY OF SECTION 10.—The amend-  
25 ments made by section 10 of this Act shall apply only with

1 respect to cease and desist orders issued under section 5  
2 of the Federal Trade Commission Act (15 U.S.C. 45), or  
3 to rules promulgated under section 18 of the Federal  
4 Trade Commission Act (15 U.S.C. 57a), after the date  
5 of enactment of this Act. These amendments shall not be  
6 construed to affect in any manner a cease and desist order  
7 which was issued, or a rule which was promulgated, before  
8 the date of enactment of this Act. These amendments shall  
9 not be construed to affect in any manner a cease and de-  
10 sist order issued after the date of enactment of this Act,  
11 if such order was issued pursuant to remand from a court  
12 of appeals or the Supreme Court of an order issued by  
13 the Federal Trade Commission before the date of enact-  
14 ment of this Act.

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