

Calendar No. 187

103D CONGRESS
1ST SESSION

S. 1179

[Report No. 103-1301]

A BILL

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

AUGUST 24, 1993

Reported without amendment

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[Report No. 103-130]

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

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

AUGUST 24, 1993

Reported, under authority of the order of the Senate of August 2 (legislative day, June 30), 1993, by Mr. HOLLINGS with amendments

[Omit the part struck through and insert the part printed in italic]

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”.

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

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

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

10 **SEC. 3. AGRICULTURAL COOPERATIVES.**

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

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

23 “(b) The Commission shall not have any authority
24 to conduct any study or investigation of any agricultural
25 marketing orders.”.

1 **SEC. 4. COMPENSATION IN PROCEEDINGS.**

2 (a) REPEAL.—Section 18(h) of the Federal Trade
3 Commission Act (15 U.S.C. 57a(h)) is repealed, and sub-
4 sections (i), (j), and (k) of section 18 are redesignated as
5 subsections (h), (i), and (j), respectively.

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

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

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

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

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

2 Section 18(b) of the Federal Trade Commission Act
3 (15 U.S.C. 57a(b)) is amended by adding at the end the
4 following new paragraph:

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

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

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

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

25 “(A) the Commission;

1 “(B) an appropriate court of appeals of
2 the United States, if (i) a petition for review of
3 such order is pending in such court, and (ii) an
4 application for such a stay was previously sub-
5 mitted to the Commission and the Commission,
6 within the thirty-day period beginning on the
7 date the application was received by the Com-
8 mission, either denied the application or did not
9 grant or deny the application; or

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

12 (b) ORDERS SUBJECT TO SECTIONS 5(m)(1)(B) AND
13 19(a)(2) OF FTCA.—Section 5(g)(3) of the Federal
14 Trade Commission Act (15 U.S.C. 45(g)(3)) is amended
15 to read as follows:

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

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

1 “(B) upon the denial of a petition for cer-
2 tiorari, if the order of the Commission has been
3 affirmed or the petition for review has been dis-
4 missed by the court of appeals; or

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

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

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

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

24 “(B) upon the denial of a petition for cer-
25 tiorari, if the order of the Commission has been

1 affirmed or the petition for review has been dis-
2 missed by the court of appeals; or

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

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

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

12 (1) in paragraph (2), by inserting “, or in any
13 antitrust violations” immediately after “section
14 5(a)(1)”;

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

18 (3) in paragraph (7), by inserting “, or any
19 antitrust violation” immediately after “section
20 5(a)(1)”;

21 (4) by adding at the end the following new
22 paragraph:

23 “(8) The term ‘antitrust violation’ means any
24 unfair method of competition (within the meaning of
25 section 5(a)(1)); any violation of the Clayton Act;

1 any violation of any other Federal statute that pro-
2 hibits, or makes available to the Commission a civil
3 remedy with respect to, any restraint upon or mo-
4 nopolization of interstate or foreign trade or com-
5 merce; or any activity in preparation for a merger,
6 acquisition, joint venture, or similar transaction,
7 which if consummated, may result in such an unfair
8 method of competition or violation.”.

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

12 (A) by inserting “or tangible things” imme-
13 diately after “documentary material” the first place
14 it appears;

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

17 (C) by inserting “to submit such tangible
18 things,” immediately after “copying or reproduc-
19 tion,”.

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

22 (A) by redesignating paragraphs (4), (5), (6),
23 (7), (8), (9), (10), (11), and (12) as paragraphs (5),
24 (6), (7), (8), (9), (10), (11), (13), and (14), respec-
25 tively;

1 (B) by inserting immediately after paragraph
2 (3) the following new paragraph:

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

5 “(A) describe each class of tangible things to be
6 submitted under the demand with such definiteness
7 and certainty as to permit such things to be fairly
8 identified;

9 “(B) prescribe a return date or dates which will
10 provide a reasonable period of time within which the
11 things so demanded may be assembled and submit-
12 ted; and

13 “(C) identify the custodian to whom such
14 things shall be ~~submitted,~~” *submitted.*”; and

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

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

1 son to whom the demand is directed has been submitted
2 to the custodian.”.

3 (c) APPLICABILITY OF SECTION 20 OF FTCA.—Sec-
4 tion 20(j)(1) of the Federal Trade Commission Act (15
5 U.S.C. 57b-1(j)(1)) is amended by inserting immediately
6 before the semicolon the following: “, any proceeding
7 under section 11(b) of the Clayton Act (15 U.S.C. 21(b)),
8 or any adjudicative proceeding under any other provision
9 of law”.

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

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

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

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

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

19 (4) in subsection (b)(3)—

20 (A) in subparagraph (A), by inserting
21 “tangible things,” immediately after “documen-
22 tary material,”;

23 (B) in subparagraph (B), by inserting “,
24 and may make tangible things available,” im-
25 mediately after “oral testimony”; and by insert-

1 ing ~~“things,”~~ , *things*, immediately after “such
2 ~~material,”~~ *material*”;

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

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

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

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

13 (7) in subsection (b)(6)—

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

19 (B) by inserting “results of inspections of
20 tangible things,” immediately after ~~“such~~ “*Such*
21 documentary material,”; and

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

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

2 Section 5 of the Federal Trade Commission Act (15
3 U.S.C. 45), as amended by section 2 of this Act, is further
4 amended by adding at the end the following new sub-
5 section:

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

13 **SEC. 11. COMMERCIAL ADVERTISING.**

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

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

2 (a) AUTHORITY TO SERVE CERTAIN PERSONS.—(1)
3 Section 13(a) of the Federal Trade Commission Act (15
4 U.S.C. 53(a)) is amended by striking the last sentence and
5 inserting in lieu thereof the following: “Any suit may be
6 brought where such person, partnership, or corporation re-
7 sides or transacts business, or wherever venue is proper
8 under section 1391 of title 28, United States Code. In
9 such a suit, the court may, if the court determines that
10 the interests of justice require that any other person, part-
11 nership, or corporation should be a party in such suit,
12 cause such other person, partnership, or corporation to be
13 summoned without regard to whether it resides or trans-
14 acts business in the district in which the suit is brought.
15 In any suit under this section, process may be served on
16 any person, partnership, or corporation wherever it may
17 be found.”.

18 (2) Section 13(b) of the Federal Trade Commission
19 Act (15 U.S.C. 53(b)) is amended by striking the last sen-
20 tence and inserting in lieu thereof the following: “Any suit
21 may be brought where such person, partnership, or cor-
22 poration resides or transacts business, or wherever venue
23 is proper under section 1391 of title 28, United States
24 Code. In such a suit, the court may, if the court deter-
25 mines that the interests of justice require that any other
26 person, partnership, or corporation should be a party in

1 such suit, cause such other person, partnership, or cor-
2 poration to be summoned without regard to whether it re-
3 sides or transacts business in the district in which the suit
4 is brought. In any suit under this section, process may
5 be served on any person, partnership, or corporation wher-
6 ever it may be found.”.

7 (b) PROCEDURES FOR SERVING PROCESS.—Section
8 13 of the Federal Trade Commission Act (15 U.S.C. 53)
9 is amended—

10 (1) by redesignating subsection (c) as sub-
11 section (d); and

12 (2) by inserting immediately after subsection
13 (b) the following new subsection:

14 “(c) Any process of the Commission under this sec-
15 tion may ~~by~~ *be* served by any person duly authorized by
16 the Commission—

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

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

1 “(3) by mailing a copy of such process by reg-
2 istered mail or certified mail addressed to such per-
3 son, partnership, or corporation at his, or her, or its
4 residence, principal office, or principal place or busi-
5 ness.

6 The verified return by the person serving such process set-
7 ting forth the manner of such service shall be proof of
8 the same.”.

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

10 (a) REPORT TO CONGRESS.—The Federal Trade
11 Commission shall submit to the Committee on Commerce,
12 Science, and Transportation of the Senate and to the
13 Committee on Energy and Commerce of the House of
14 Representatives the information specified in subsection (b)
15 every six months during each of the fiscal years 1994,
16 1995, and 1996. Each such report shall contain such in-
17 formation for the period since the last submission under
18 this section.

19 (b) CONTENTS OF REPORT.—Each such report shall
20 list and ~~described,~~ *describe*, with respect to instances in
21 which resale price maintenance has been suspected or al-
22 leged—

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

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

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

5 (4) each recommendation for the issuance of a
6 ~~compliant~~ *complaint* forwarded by the staff to the
7 Commission;

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

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

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

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

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

21 (10) each disposition by the Commission of a
22 request for modification of an outstanding Commis-
23 sion order.

24 Such report shall include the sum total of matters in each
25 category specified in paragraphs (1) through (10), and

1 copies of all such consent agreements and complaints exe-
2 cuted by the Commission. Where a matter has been closed
3 or terminated, the report shall include a statement of the
4 reasons for that disposition. The description required
5 under this subsection shall be as complete as possible but
6 shall not reveal the identity of persons or companies mak-
7 ing the complaint or those complained about or those sub-
8 ject to investigation that have not otherwise been made
9 public.

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

11 (a) REPORT TO CONGRESS.—The Federal Trade
12 Commission shall submit to the Committee on Commerce,
13 Science, and Transportation of the Senate and to the
14 Committee on Energy and Commerce of the House of
15 Representatives the information specified in subsection (b)
16 every six months during each of the fiscal years 1994,
17 1995, and 1996. Each such report shall contain such in-
18 formation for the period since the last submission under
19 this section.

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

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

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

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

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

7 (5) each complaint issued by the Commission;

8 (6) each opinion and ~~other~~ *order* entered by the
9 Commission;

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

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

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

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

21 Such report shall include copies of all such consent agree-
22 ments and complaints executed by the Commission re-
23 ferred to in such report. Where a matter has been closed
24 or terminated, the report shall include a statement of the
25 reasons for that disposition. The descriptions required

1 under this subsection shall be as complete as possible but
2 shall not reveal the identity of persons or companies mak-
3 ing the complaint or those complained about or those sub-
4 ject to investigation that have not otherwise been made
5 public. The report shall include any evaluation by the
6 Commission of the potential impacts of predatory pricing
7 upon businesses (including small businesses).

8 **SEC. 15. INTERVENTION BY COMMISSION IN CERTAIN PRO-**
9 **CEEDINGS.**

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

24 (b) CONTENTS OF NOTICE TO CONGRESS.—The no-
25 tice required in subsection (a) shall include the name of

1 the agency or legislator involved, the date of such action,
2 and a concise statement regarding the nature and purpose
3 of such action.

4 **SEC. 16. RESOURCE ALLOCATION STUDY.**

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

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

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

19 (3) the number of personnel in supervisory posi-
20 tions, contrasted with those personnel in non-
21 supervisory positions; and

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

1 The Commission shall transmit the results of such study,
2 together with any recommendations that the Commission
3 determines appropriate, to the Committee on Commerce,
4 Science, and Transportation of the Senate and the Com-
5 mittee on Energy and Commerce of the House of Rep-
6 resentatives not later than six months after the date of
7 enactment of this Act.

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

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

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

18 (2) consult with the attorneys general of the
19 States, representatives of consumers and industry,
20 and other interested parties; and

21 (3) consider such other issues as will result in
22 more efficient implementation of the statutory re-
23 sponsibilities of the Commission.

24 Not later than six months after the date of enactment of
25 this Act, the Federal Trade Commission shall transmit to

1 the Committee on Commerce, Science, and Transportation
2 of the Senate and the Committee on Energy and Com-
3 merce of the House of Representatives the information
4 identified in paragraphs (1) through (3), together with
5 specific recommendations for methods of achieving greater
6 cooperation between the Commission and the States.

7 **SEC. 18. CREDIT REPAIR ORGANIZATIONS AND LOAN BRO-**
8 **KERS.**

9 (a) DEFINITIONS.—In this section, the following
10 terms apply:

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

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

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

23 (ii) any application fee or other charge as-
24 sessed or collected—

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

4 (II) in connection with a consumer
5 credit transaction in which a purchase
6 money security interest arising under an
7 installment sales contract (or any equiva-
8 lent consensual security interest) is created
9 or retained against any such property or
10 automobile being sold by the retail seller to
11 the person seeking the extension of credit.

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

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

21 (i) improving a consumer’s credit record,
22 history, or rating; or

23 (ii) providing advice or assistance to a
24 consumer with regard to the consumer’s credit
25 record, history, or rating.

1 (B) The term “credit repair organization” does
2 not include—

3 (i) a depository institution whose deposits
4 are insured by the Federal Deposit Insurance
5 Corporation, the Federal Savings and Loan In-
6 surance Corporation, or the National Credit
7 Union Administration Board, or a depository
8 institution chartered by a State;

9 (ii) any nonprofit organization exempt
10 from taxation under section 501(c)(3) of the In-
11 ternal Revenue Code;

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

14 (iv) a licensed attorney at law rendering
15 services within the course and scope of that li-
16 cense;

17 (v) any broker-dealer registered with the
18 Securities and Exchange Commission or the
19 Commodity Futures Trading Commission act-
20 ing within the scope of the Securities and Ex-
21 change Commission or the Commodity Futures
22 Trading Commission regulations;

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

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

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

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

10 (ii) for, or in expectation of, a consider-
11 ation, assists or advises an individual on obtain-
12 ing, or attempting to obtain, consumer credit;
13 or

14 (iii) acts or purports to act for, or on be-
15 half of, a loan broker for the purpose of solicit-
16 ing individuals interested in obtaining consumer
17 credit.

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

19 (i) any insured depository institution (as
20 defined in section 3(c)(2) of the Federal De-
21 posit Insurance Act; 12 U.S.C. 1813(c)(2)), any
22 insured credit union (as defined in section
23 101(7) of the Federal Credit Union Act; 12
24 U.S.C. 1752(7)), or any depository institution
25 which is eligible for deposit insurance under the

1 Federal Deposit Insurance Act or the Federal
2 Credit Union Act and has deposit insurance
3 coverage provided by any State;

4 (ii) any lender approved by the Federal
5 Housing Administration, Farmers Home Ad-
6 ministration, or Department of Veterans Af-
7 fairs;

8 (iii) any seller or servicer of mortgages ap-
9 proved by the Federal National Mortgage Asso-
10 ciation or the Federal Home Loan Mortgage
11 Corporation; or

12 (iv) any consumer finance company, retail
13 installment sales company, securities broker or
14 dealer, real estate broker or real estate sales-
15 person, attorney, credit card company, install-
16 ment loan licensee, mortgage broker or lender,
17 or insurance company if such person is—

18 (I) licensed by and subject to regula-
19 tion or supervision by any agency of the
20 United States or by the State in which the
21 person seeking to utilize the services of the
22 loan broker resides; and

23 (II) is acting within the scope of that
24 license or regulation.

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

7 (c) PROHIBITED PRACTICES OF LOAN BROKERS.—
8 (1) No loan broker may receive an advance fee in connec-
9 tion with—

10 (A) arranging or attempting to arrange
11 consumer credit;

12 (B) offering to find for any individual consumer
13 credit; or

14 (C) advising any individual as to how to obtain
15 consumer credit.

16 (2) No loan broker may—

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

20 (B) engage, directly or indirectly, in any act
21 that operates or would operate as fraud or deception
22 upon any person in connection with the offer or sale
23 of the services of a loan broker, notwithstanding the
24 absence of reliance by the person to whom the loan
25 broker's services are offered or sold.

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

3 (1) be treated as a violation of a rule of the
4 Federal Trade Commission issued pursuant to sec-
5 tion 18(a)(1)(B) of the Federal Trade Commission
6 Act (15 U.S.C. 57a(a)(1)(B)); and

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

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

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

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

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

22 (3) For purposes of section 3005(a) of title 39, Unit-
23 ed States Code, a violation of subsection (b) or (c) of this
24 section by any person shall constitute prima facie evidence
25 that such person is engaged in conducting a scheme or

1 device for obtaining money or property through the mail
2 by means of false representations.

3 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

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

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

7 (2) by inserting immediately before the period
8 at the end the following: “; not to exceed
9 \$88,000,000 for the fiscal year ending September
10 30, 1994; not to exceed \$92,000,000 for the fiscal
11 year ending September 30, 1995; and not to exceed
12 \$95,000,000 for the fiscal year ending September
13 30, 1996, and such additional sums for the fiscal
14 years ending September 30, 1994, and September
15 30, 1995, as may be necessary for increases in sal-
16 ary, pay, and other employee benefits as authorized
17 by law”.

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

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

22 (b) APPLICABILITY OF SECTION 2.—The amendment
23 made by section 2 of this Act shall apply only with respect
24 to proceedings under section 5 of the Federal Trade Com-
25 mission Act (15 U.S.C. 45) after the date of enactment

1 of this Act. This amendment shall not be construed to af-
2 fect in any manner a cease and desist order which was
3 issued, or a rule which was promulgated, before the date
4 of enactment of this Act. This amendment shall not be
5 construed to affect in any manner a cease and desist order
6 issued after the date of enactment of this Act, if such
7 order was issued pursuant to remand from a court of ap-
8 peals or the Supreme Court of an order issued by the Fed-
9 eral Trade Commission before the date of enactment of
10 this Act.

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

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

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

5 (f) APPLICABILITY OF SECTION 10.—The amend-
6 ments made by section 10 of this Act shall apply only with
7 respect to cease and desist orders issued under section 5
8 of the Federal Trade Commission Act (15 U.S.C. 45), or
9 to rules promulgated under section 18 of the Federal
10 Trade Commission Act (15 U.S.C. 57a), after the date
11 of enactment of this Act. These amendments shall not be
12 construed to affect in any manner a cease and desist order
13 which was issued, or a rule which was promulgated, before
14 the date of enactment of this Act. These amendments shall
15 not be construed to affect in any manner a cease and de-
16 sist order issued after the date of enactment of this Act,
17 if such order was issued pursuant to remand from a court
18 of appeals or the Supreme Court of an order issued by
19 the Federal Trade Commission before the date of enact-
20 ment of this Act.

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