

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

# S. 279

To prohibit the receipt of advance fees by unregulated loan brokers.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 5), 1993

Mr. LIEBERMAN (for himself and Mr. BRYAN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To prohibit the receipt of advance fees 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. DEFINITIONS.**

7 For purposes of this Act—

8 (1) LOAN BROKER.—The term “loan broker”—

9 (A) means any person who—

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

5 (ii) for, or in expectation of, a consid-  
6 eration, assists or advises an individual on  
7 obtaining, or attempting to obtain,  
8 consumer credit; or

9 (iii) acts or purports to act for, or on  
10 behalf of, a loan broker for the purpose of  
11 soliciting individuals interested in obtain-  
12 ing consumer credit; and

13 (B) does not include—

14 (i) any insured depository institution  
15 (as defined in section 3(c)(2) of the Fed-  
16 eral Deposit Insurance Act), any insured  
17 credit union (as defined in section 101(7)  
18 of the Federal Credit Union Act), or any  
19 depository institution which is eligible for  
20 deposit insurance under the Federal De-  
21 posit Insurance Act or the Federal Credit  
22 Union Act and has deposit insurance cov-  
23 erage provided by any State;

24 (ii) any lender approved by the Fed-  
25 eral Housing Administration, Farmers

1 Home Administration, or Department of  
2 Veterans Affairs;

3 (iii) any seller or servicer of mort-  
4 gages approved by the Federal National  
5 Mortgage Association or the Federal Home  
6 Loan Mortgage Corporation; or

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

14 (I) licensed by and subject to  
15 regulation or supervision by any agen-  
16 cy of the United States or by the  
17 State in which the person seeking to  
18 utilize the services of the loan broker  
19 resides; and

20 (II) is acting within the scope of  
21 that license or regulation.

22 (2) ADVANCE FEE.—The term “advance fee”—

23 (A) means any fee (including any advance  
24 payment of interest or other fees for any exten-  
25 sion of consumer credit) which is assessed or

1 collected by a loan broker from any person  
2 seeking the consumer credit before the exten-  
3 sion of such credit; and

4 (B) does not include—

5 (i) any amount that the loan broker  
6 can demonstrate is collected solely for the  
7 purpose of payment to unaffiliated, third  
8 party vendors for actual expenses incurred  
9 and payable before the extension of any  
10 consumer credit; or

11 (ii) any application fee or other  
12 charge assessed or collected—

13 (I) by a retail seller of property  
14 that is primarily for personal, family,  
15 or household purposes or automobiles;

16 (II) in connection with a  
17 consumer credit transaction in which  
18 a purchase money security interest  
19 arising under an installment sales  
20 contract (or any equivalent consensual  
21 security interest) is created or re-  
22 tained against any such property or  
23 automobile being sold by the retail  
24 seller to the person seeking the exten-  
25 sion of credit; or

1 (III) in connection with a resi-  
2 dential real estate transaction that is  
3 secured by a first lien on the property,  
4 including a purchase, refinancing, or  
5 consolidation of an extension of credit.

6 (3) CONSUMER; CREDIT.—The terms  
7 “consumer” and “credit” have the meanings given  
8 to such terms in section 103 of the Truth in Lend-  
9 ing Act.

10 **SEC. 3. PROHIBITION ON ADVANCE FEES.**

11 (a) IN GENERAL.—No loan broker may receive an ad-  
12 vance fee in connection with—

13 (1) arranging or attempting to arrange  
14 consumer credit;

15 (2) offering to find for any individual consumer  
16 credit; or

17 (3) advising any individual as to how to obtain  
18 consumer credit.

19 (b) PROHIBITION ON FALSE OR MISLEADING REP-  
20 RESENTATIONS.—No loan broker may—

21 (1) make or use any false or misleading rep-  
22 resentations or omit any material fact in the offer  
23 or sale of the service of a loan broker; or

24 (2) engage, directly or indirectly, in any act  
25 that operates or would operate as fraud or deception

1 upon any person in connection with the offer or sale  
2 of the services of a loan broker, notwithstanding the  
3 absence of reliance by the person to whom the loan  
4 broker's services are offered or sold.

5 **SEC. 4. ENFORCEMENT BY THE FTC.**

6 Any violation of section 3 of this Act shall—

7 (1) be treated as a violation of a rule of the  
8 Federal Trade Commission issued pursuant to sec-  
9 tion 18(a)(1)(B) of the Federal Trade Commission  
10 Act; and

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

14 **SEC. 5. CRIMINAL PENALTY.**

15 (a) **IN GENERAL.**—Whoever knowingly violates sec-  
16 tion 3 shall be fined under title 18, United States Code,  
17 imprisoned for not more than 5 years, or both.

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

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

22 (2) by inserting “, or a violation of section 5(a)  
23 of the Advance Fee Loan Scam Prevention Act of  
24 1993” before the period.

1       (c) NONMAILABLE MATTER.—For purposes of sec-  
2 tion 3005(a) of title 39, United States Code, a violation  
3 of section 3 by any person shall constitute prima facie evi-  
4 dence that such person is engaged in conducting a scheme  
5 or device for obtaining money or property through the mail  
6 by means of false representations.

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