

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

**H. R. 2243**

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**AMENDMENT**

***In the Senate of the United States,***

*September 22 (legislative day, September 7), 1993.*

*Resolved,* That the bill from the House of Representatives (H.R. 2243) entitled “An Act to to amend the Federal Trade Commission Act to extend the authorization of appropriations in such Act, and for other purposes”, do pass with the following

**AMENDMENT:**

Strike out all after the enacting clause and insert:

1 ***SECTION. 1. SHORT TITLE.***

2 *This Act may be cited as the “Federal Trade Commis-*  
3 *sion Act Amendments of 1993”.*

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

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

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

13 ***SEC. 3. AGRICULTURAL COOPERATIVES.***

14 *The Federal Trade Commission Act (15 U.S.C. 41 et*  
15 *seq.) is amended by redesignating sections 24 and 25 as*

1 sections 26 and 27, respectively, and by inserting imme-  
2 diately after section 23 the following new section:

3       “*SEC. 24. (a) The Commission shall not have any au-*  
4 *thority to conduct any study, investigation, or prosecution*  
5 *of any agricultural cooperative for any conduct which, be-*  
6 *cause of the provisions of the Act entitled ‘An Act to author-*  
7 *ize association of producers of agricultural products’, ap-*  
8 *proved February 18, 1922 (7 U.S.C. 291 et seq., commonly*  
9 *known as the Capper-Volstead Act), is not a violation of*  
10 *any of the antitrust Acts or this Act.*

11       “*(b) The Commission shall not have any authority to*  
12 *conduct any study or investigation of any agricultural*  
13 *marketing orders.’”*

14 **SEC. 4. COMPENSATION IN PROCEEDINGS.**

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16 Commission Act (15 U.S.C. 57a(h)) is repealed, and sub-  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

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

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

24       (a) *EXCEPTION FOR CONSENT ORDERS.*—Section  
25 5(m)(1)(B) of the Federal Trade Commission Act (15

1 *U.S.C. 45(m)(1)(B)) is amended by inserting “, other than*  
2 *a consent order,” immediately after “order” the first time*  
3 *it appears.*

4 *(b) REVIEW OF DETERMINATIONS OF LAW.—Section*  
5 *5(m)(2) of the Federal Trade Commission Act (15 U.S.C.*  
6 *45(m)(2)) is amended by adding at the end of the following:*  
7 *“Upon request of any party to such an action against such*  
8 *defendant, the court shall also review the determination of*  
9 *law made by the Commission in the proceeding under sub-*  
10 *section (b) that the act or practice which was the subject*  
11 *of such proceeding constituted an unfair or deceptive act*  
12 *or practice in violation of subsection (a).”.*

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

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

17 *“(3) The Commission shall issue a notice of proposed*  
18 *rulemaking pursuant to paragraph (1)(A) only where it has*  
19 *reason to believe that the unfair or deceptive acts or prac-*  
20 *tices which are the subject of the proposed rulemaking are*  
21 *prevalent. The Commission shall make a determination that*  
22 *unfair or deceptive acts or practices are prevalent under*  
23 *this paragraph only if it has issued cease and desist orders*  
24 *regarding such acts or practices, or any other information*

1 *available to the Commission indicates a pattern of unfair*  
2 *or deceptive acts or practices.”.*

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

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

7 *“(2) Except as to any order provision subject to*  
8 *paragraph (4), upon the sixtieth day after such order*  
9 *is served, if a petition for review has been duly filed;*  
10 *except that any such order may be stayed, in whole*  
11 *or in part and subject to such conditions as may be*  
12 *appropriate, by—*

13 *“(A) the Commission;*

14 *“(B) an appropriate court of appeals of the*  
15 *United States, if (i) a petition for review of such*  
16 *order is pending in such court, and (ii) an ap-*  
17 *plication for such a stay was previously submit-*  
18 *ted to the Commission and the Commission,*  
19 *within the thirty-day period beginning on the*  
20 *date the application was received by the Com-*  
21 *mission, either denied the application or did not*  
22 *grant or deny the application; or*

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

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

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

8           “(A) *upon the expiration of the time al-*  
9 *lowed for filing a petition for certiorari, if the*  
10 *order of the Commission has been affirmed or the*  
11 *petition for review has been dismissed by the*  
12 *court of appeals and no petition for certiorari*  
13 *has been duly filed;*

14           “(B) *upon the denial of a petition for cer-*  
15 *tiorari, if the order of the Commission has been*  
16 *affirmed or the petition for review has been dis-*  
17 *missed by the court of appeals; or*

18           “(C) *upon the expiration of thirty days*  
19 *from the date of issuance of a mandate of the Su-*  
20 *preme Court directing that the order of the Com-*  
21 *mission be affirmed or the petition for review be*  
22 *dismissed; or”.*

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

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

6                   “(A) upon the expiration of the time al-  
7                   lowed for filing a petition for certiorari, if the  
8                   order of the Commission has been affirmed or the  
9                   petition for review has been dismissed by the  
10                  court of appeals and no petition for certiorari  
11                  has been duly filed;

12                  “(B) upon the denial of a petition for cer-  
13                  tiorari, if the order of the Commission has been  
14                  affirmed or the petition for review has been dis-  
15                  missed by the court of appeals; or

16                  “(C) upon the expiration of thirty days  
17                  from the date of issuance of a mandate of the Su-  
18                  preme Court directing that the order of the Com-  
19                  mission be affirmed or the petition for review be  
20                  dismissed.”.

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

22           (a) *DEFINITIONS.*—Section 20(a) of the Federal Trade  
23           Commission Act (15 U.S.C. 57b-1(a)) is amended—

1           (1) in paragraph (2), by inserting “, or in any  
2 antitrust violations” immediately after “section  
3 5(a)(1)”;

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

7           (3) in paragraph (7), by inserting “, or any  
8 antitrust violation” immediately after “section  
9 5(a)(1)”;

10          (4) by adding at the end the following new para-  
11 graph:

12           “(8) The term ‘antitrust violation’ means any  
13 unfair method of competition (within the meaning of  
14 section 5(a)(1)); any violation of the Clayton Act; any  
15 violation of any other Federal statute that prohibits,  
16 or makes available to the Commission a civil remedy  
17 with respect to, any restraint upon or monopolization  
18 of interstate or foreign trade or commerce; or any ac-  
19 tivity in preparation for a merger, acquisition, joint  
20 venture, or similar transaction, which if con-  
21 summated, may result in such an unfair method of  
22 competition or violation.”.

23          (b) ISSUANCE OF DEMAND.—(1) Section 20 (c)(1) of  
24 the Federal Trade Commission Act (15 U.S.C. 57b–1 (c)(1))  
25 is amended—

1           (A) by inserting “or tangible things” imme-  
2           diately after “documentary material” the first place  
3           it appears;

4           (B) by inserting “or to antitrust violations,” im-  
5           mediately after “section 5 (a)(1) ,”; and

6           (C) by inserting “to submit such tangible  
7           things,” immediately after “copying or reproduc-  
8           tion,”.

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

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

15           (B) by inserting immediately after paragraph  
16           (3) the following new paragraph:

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

19           “(A) describe each class of tangible things to be  
20           submitted under the demand with such definiteness  
21           and certainty as to permit such things to be fairly  
22           identified;

23           “(B) prescribe a return date or dates which will  
24           provide a reasonable period of time within which the

1        *things so demanded may be assembled and submitted;*  
2        *and*

3            *“(C) identify the custodian to whom such things*  
4        *shall be submitted.”; and*

5            *(C) by inserting immediately after paragraph*  
6        *(11), as so redesignated, the following new paragraph:*

7            *“(12) The submission of tangible things in response to*  
8        *a civil investigative demand shall be made under a sworn*  
9        *certificate, in such form as the demand designates, by the*  
10       *person to whom the demand is directed or, if not a natural*  
11       *person, by any person having knowledge of the facts and*  
12       *circumstances relating to such production, to the effect that*  
13       *all of the physical evidence required by the demand and*  
14       *in the possession, custody, or control of the person to whom*  
15       *the demand is directed has been submitted to the custo-*  
16       *dian.”.*

17            *(c) APPLICABILITY OF SECTION 20 OF FTCA.—Section*  
18       *20(j)(1) of the Federal Trade Commission Act (15 U.S.C.*  
19       *57b–1(j)(1)) is amended by inserting immediately before the*  
20       *semicolon the following: “, any proceeding under section*  
21       *11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudica-*  
22       *tive proceeding under any other provision of law”.*

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

24            *Section 21 of the Federal Trade Commission Act (15*  
25       *U.S.C. 57b–2) is amended—*

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

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

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

7           (4) in subsection (b)(3)—

8                 (A) in subparagraph (A), by inserting “tan-  
9 gible things,” immediately after “documentary  
10 material,”;

11                (B) in subparagraph (B), by inserting “,  
12 and may make tangible things available,” imme-  
13 diately after “oral testimony”; and by inserting  
14 “, things,” immediately after “such material”;

15                (C) in subparagraph (C), by inserting “tan-  
16 gible things,” immediately after “documentary  
17 material,”; and

18                (D) in subparagraph (D), by inserting “,  
19 tangible things,” immediately after “documen-  
20 tary material”;

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

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

25           (7) in subsection (b)(6)—

1           (A) by inserting immediately after the first  
2 sentence the following new sentence: “The custo-  
3 dian of any tangible things may make such  
4 things available for inspection to such persons on  
5 the same basis.”; and

6           (B) by inserting “results of inspections of  
7 tangible things,” immediately after “Such docu-  
8 mentary material,”; and

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

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

12       Section 5 of the Federal Trade Commission Act (15  
13 U.S.C. 45), as amended by section 2 of this Act, is further  
14 amended by adding at the end the following new subsection:

15       “(o) The Commission shall have no authority under  
16 this section or section 18 to declare unlawful an act or prac-  
17 tice on the grounds that such act or practice is unfair unless  
18 the act or practice causes or is likely to cause substantial  
19 injury to consumers which is not reasonably avoidable by  
20 consumers themselves and not outweighed by countervailing  
21 benefits to consumers or to competition.”.

22 **SEC. 11. COMMERCIAL ADVERTISING.**

23       Section 18(h) of the Federal Trade Commission Act  
24 (15 U.S.C. 57a(h)), as so redesignated in section 4(a) of  
25 this Act, is amended by adding at the end the following:

1 *“The Commission shall have no authority under this section*  
2 *to initiate any new rulemaking proceeding which is in-*  
3 *tended to or may result in the promulgation of any rule*  
4 *by the Commission which prohibits or otherwise regulates*  
5 *any commercial advertising on the basis of a determination*  
6 *by the Commission that such commercial advertising con-*  
7 *stitutes an unfair act or practice in or affecting*  
8 *commerce.”.*

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

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

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

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

18           (1) *by redesignating subsection (c) as subsection*

19 *(d); and*

20           (2) *by inserting immediately after subsection (b)*  
21 *the following new subsection:*

22           “(c) *Any process of the Commission under this section*  
23 *may be served by any person duly authorized by the Com-*  
24 *mission—*

1           “(1) by delivering a copy of such process to the  
2           person to be served, to a member of the partnership  
3           to be served, or to the president, secretary, or other ex-  
4           ecutive officer or a director of the corporation to be  
5           served;

6           “(2) by leaving a copy of such process at the res-  
7           idence or the principal office or place of business of  
8           such person, partnership, or corporation; or

9           “(3) by mailing a copy of such process by reg-  
10          istered mail or certified mail addressed to such per-  
11          son, partnership, or corporation at his, or her, or its  
12          residence, principal office, or principal place or busi-  
13          ness.

14          The verified return by the person serving such process set-  
15          ting forth the manner of such service shall be proof of the  
16          same.”

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

18          (a) *REPORT TO CONGRESS.*—The Federal Trade Com-  
19          mission shall submit to the Committee on Commerce,  
20          Science, and Transportation of the Senate and to the Com-  
21          mittee on Energy and Commerce of the House of Represent-  
22          atives the information specified in subsection (b) every six  
23          months during each of the fiscal years 1994, 1995, and  
24          1996. Each such report shall contain such information for  
25          the period since the last submission under this section.

1       (b) *CONTENTS OF REPORT.*—Each such report shall  
2 *list and describe, with respect to instances in which resale*  
3 *price maintenance has been suspected or alleged—*

4           (1) *each complaint made, orally or in writing,*  
5 *to the offices of the Commission;*

6           (2) *each preliminary investigation opened or*  
7 *closed at the Commission;*

8           (3) *each formal investigation opened or closed at*  
9 *the Commission;*

10          (4) *each recommendation for the issuance of a*  
11 *complaint forwarded by the staff to the Commission;*

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

15          (6) *each opinion and order entered by the Com-*  
16 *mission;*

17          (7) *each consent agreement accepted provision-*  
18 *ally or finally by the Commission;*

19          (8) *each request for modification of an outstand-*  
20 *ing Commission order filed with the Commission;*

21          (9) *each recommendation by staff pertaining to*  
22 *a request for modification of an outstanding Commis-*  
23 *sion order; and*

1           (10) each disposition by the Commission of a re-  
2           quest for modification of an outstanding Commission  
3           order.

4   Such report shall include the sum total of matters in each  
5   category specified in paragraphs (1) through (10), and cop-  
6   ies of all such consent agreements and complaints executed  
7   by the Commission. Where a matter has been closed or ter-  
8   minated, the report shall include a statement of the reasons  
9   for that disposition. The description required under this  
10   subsection shall be as complete as possible but shall not re-  
11   veal the identity of persons or companies making the com-  
12   plaint or those complained about or those subject to inves-  
13   tigation that have not otherwise been made public.

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

15           (a) *REPORT TO CONGRESS.*—The Federal Trade Com-  
16   mission shall submit to the Committee on Commerce,  
17   Science, and Transportation of the Senate and to the Com-  
18   mittee on Energy and Commerce of the House of Represent-  
19   atives the information specified in subsection (b) every six  
20   months during each of the fiscal years 1994, 1995, and  
21   1996. Each such report shall contain such information for  
22   the period since the last submission under this section.

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

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

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

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

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

9           (5) each complaint issued by the Commission;

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

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

14          (8) each request for modification of an outstand-  
15          ing Commission order filed with the Commission;

16          (9) each recommendation by staff pertaining to  
17          a request for modification of an outstanding Commis-  
18          sion order; and

19          (10) each disposition by the Commission of a re-  
20          quest for modification of an outstanding Commission  
21          order.

22          Such report shall include copies of all such consent agree-  
23          ments and complaints executed by the Commission referred  
24          to in such report. Where a matter has been closed or termi-  
25          nated, the report shall include a statement of the reasons

1 *for that disposition. The descriptions required under this*  
2 *subsection shall be as complete as possible but shall not re-*  
3 *veal the identity of persons or companies making the com-*  
4 *plaint or those complained about or those subject to inves-*  
5 *tigation that have not otherwise been made public. The re-*  
6 *port shall include any evaluation by the Commission of the*  
7 *potential impacts of predatory pricing upon businesses (in-*  
8 *cluding small businesses).*

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

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

24 (b) *CONTENTS OF NOTICE TO CONGRESS.—The notice*  
25 *required in subsection (a) shall include the name of the*

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

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

5 *The Federal Trade Commission shall conduct an eval-*  
6 *uation of the level of its personnel resources and the manner*  
7 *in which such resources are allocated. The Commission shall*  
8 *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 protec-*  
12 *tion;*

13 *(2) the distribution of personnel to individual of-*  
14 *fices of commissioners, departments, bureaus, and*  
15 *other units within the Commission, and whether the*  
16 *current allocation of personnel most efficiently enables*  
17 *the Commission to fulfill its statutory mandate;*

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

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

24 *The Commission shall transmit the results of such study,*  
25 *together with any recommendations that the Commission*

1 *determines appropriate, to the Committee on Commerce,*  
2 *Science, and Transportation of the Senate and the Commit-*  
3 *tee on Energy and Commerce of the House of Representa-*  
4 *tives not later than six months after the date of enactment*  
5 *of this Act.*

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

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

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

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

19 *(3) consider such other issues as will result in*  
20 *more efficient implementation of the statutory respon-*  
21 *sibilities of the Commission.*

22 *Not later than six months after the date of enactment of*  
23 *this Act, the Federal Trade Commission shall transmit to*  
24 *the Committee on Commerce, Science, and Transportation*  
25 *of the Senate and the Committee on Energy and Commerce*

1 *of the House of Representatives the information identified*  
2 *in paragraphs (1) through (3), together with specific rec-*  
3 *ommendations for methods of achieving greater cooperation*  
4 *between the Commission and the States.*

5 **SEC. 18. CREDIT REPAIR ORGANIZATIONS AND LOAN BRO-**  
6 **KERS.**

7 (a) *DEFINITIONS.—In this section, the following terms*  
8 *apply:*

9 (1)(A) *The term “advance fee” means any fee*  
10 *(including any advance payment of interest or other*  
11 *fees for any extension of consumer credit) which is as-*  
12 *essed or collected by a loan broker from any person*  
13 *seeking the consumer credit before the extension of*  
14 *such credit.*

15 (B) *The term “advance fee” does not include—*  
16 *(i) any amount that the loan broker can*  
17 *demonstrate is collected solely for the purpose of*  
18 *payment to unaffiliated, third party vendors for*  
19 *actual expenses incurred and payable before the*  
20 *extension of any consumer credit; or*

21 *(ii) any application fee or other charge as-*  
22 *essed or collected—*

23 *(I) by a retail seller of property that is*  
24 *primarily for personal, family, or household*  
25 *purposes or automobiles; and*

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

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

12          (3)(A) *The term “credit repair organization”*  
13          *means any person who sells, provides, or performs, or*  
14          *represents that such person can or will sell, provide,*  
15          *or perform, in return for the payment of money or*  
16          *other valuable consideration, a service for the express*  
17          *or implied purpose of—*

18                  (i) *improving a consumer’s credit record,*  
19                  *history, or rating; or*

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

23          (B) *The term “credit repair organization” does*  
24          *not include—*

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

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

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

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

15          (v) any broker-dealer registered with the Se-  
16 curities and Exchange Commission or the Com-  
17 modity Futures Trading Commission acting  
18 within the scope of the Securities and Exchange  
19 Commission or the Commodity Futures Trading  
20 Commission regulations;

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

23          (vii) any debt collector as defined in section  
24 803 of the Fair Debt Collection Practices Act (15

1           *U.S.C. 1692a), acting within the course and*  
2           *scope of that Act.*

3           *(4)(A) The term “loan broker” means any person*  
4           *who—*

5                     *(i) for, or in expectation of, a consideration,*  
6                     *arranges or attempts to arrange or offers to find*  
7                     *for any individual, consumer credit;*

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

11                    *(iii) acts or purports to act for, or on behalf*  
12                    *of, a loan broker for the purpose of soliciting in-*  
13                    *dividuals interested in obtaining consumer cred-*  
14                    *it.*

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

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

1           (ii) any lender approved by the Federal  
2           Housing Administration, Farmers Home Ad-  
3           ministration, or Department of Veterans Affairs;

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

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

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

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

21          (b) *PROHIBITED PRACTICES OF CREDIT REPAIR OR-*  
22          *GANIZATIONS.*—A credit repair organization shall not  
23          charge or receive any money or other valuable consideration  
24          prior to completion of the services that the credit repair

1 *organization has agreed to perform for the consumer and*  
2 *that are described in subsection (a)(1).*

3 *(c) PROHIBITED PRACTICES OF LOAN BROKERS.—(1)*

4 *No loan broker may receive an advance fee in connection*  
5 *with—*

6 *(A) arranging or attempting to arrange*  
7 *consumer credit;*

8 *(B) offering to find for any individual consumer*  
9 *credit; or*

10 *(C) advising any individual as to how to obtain*  
11 *consumer credit.*

12 *(2) No loan broker may—*

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

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

22 *(d) ENFORCEMENT BY FEDERAL TRADE COMMIS-*  
23 *SION.—Any violation of this section shall—*

24 *(1) be treated as a violation of a rule of the Fed-*  
25 *eral Trade Commission issued pursuant to section*

1       18(a)(1)(B) of the Federal Trade Commission Act (15  
2       U.S.C. 57a(a)(1)(B)); 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       (e) *CRIMINAL PENALTY.*—(1) Whoever knowingly vio-  
7       lates subsection (b) or (c) shall be fined under title 18, Unit-  
8       ed States Code, imprisoned for not more than five years,  
9       or both.

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

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

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

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

23       **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

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

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

2           (2) by inserting immediately before the period at  
3           the end the following: “; not to exceed \$88,000,000 for  
4           the fiscal year ending September 30, 1994; not to ex-  
5           ceed \$92,000,000 for the fiscal year ending September  
6           30, 1995; and not to exceed \$95,000,000 for the fiscal  
7           year ending September 30, 1996, and such additional  
8           sums for the fiscal years ending September 30, 1994,  
9           and September 30, 1995, as may be necessary for in-  
10          creases in salary, pay, and other employee benefits as  
11          authorized 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 of  
20          this Act. This amendment shall not be construed to affect  
21          in any manner a cease and desist order which was issued,  
22          or a rule which was promulgated, before the date of enact-  
23          ment of this Act. This amendment shall not be construed  
24          to affect in any manner a cease and desist order issued after  
25          the date of enactment of this Act, if such order was issued

1 *pursuant to remand from a court of appeals or the Supreme*  
2 *Court of an order issued by the Federal Trade Commission*  
3 *before the date of enactment of this Act.*

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

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

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

22 (f) *APPLICABILITY OF SECTION 10.—The amendments*  
23 *made by section 10 of this Act shall apply only with respect*  
24 *to cease and desist orders issued under section 5 of the Fed-*  
25 *eral Trade Commission Act (15 U.S.C. 45), or to rules pro-*

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

Attest:

Secretary.

S 1179 ES EAS—2

S 1179 ES EAS—3

S 1179 ES EAS—4