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By: **Senator Gladden**

Introduced and read first time: February 3, 2006

Assigned to: Finance

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A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law - Credit Regulation - Home Mortgage Loans**

3 FOR the purpose of prohibiting certain lenders from financing, through a home loan,  
4 certain insurance policies and debt suspension or cancellation agreements under  
5 certain circumstances; establishing certain limitations on late payment fees  
6 certain lenders may charge with respect to a home loan; requiring certain  
7 lenders to provide a payoff balance to a borrower under certain circumstances;  
8 prohibiting certain lenders from recommending or encouraging a default on an  
9 existing loan or other debt under certain circumstances; prohibiting certain  
10 lenders from making high-cost home loans under certain circumstances;  
11 prohibiting certain lenders from paying certain home improvement contractors  
12 from the proceeds of a high-cost home loan under certain circumstances;  
13 prohibiting certain lenders and brokers of high-cost home loans from steering  
14 certain borrowers into certain loans under certain circumstances; prohibiting  
15 high-cost home loans from including certain terms and provisions under certain  
16 circumstances; providing that a violation of certain provisions of this Act is an  
17 unfair or deceptive trade practice within the meaning of the Maryland  
18 Consumer Protection Act and is subject to certain enforcement and penalty  
19 provisions; authorizing a person to bring a certain action under certain  
20 circumstances; authorizing a court to award certain damages and attorney's fees  
21 under certain circumstances; providing that if a lender that makes a home loan  
22 intentionally violates certain provisions of this Act, the lender is subject to  
23 forfeiture of certain principal, interest, fees, and charges; providing that a term  
24 of a home loan that violates certain provisions of this Act is unenforceable;  
25 providing that certain rights of recession and other remedies are available to a  
26 borrower under certain circumstances; authorizing a borrower to assert certain  
27 violations of this Act as a defense, bar, or counterclaim to certain actions under  
28 certain circumstances; providing that a lender that makes a home loan and that,  
29 acting in good faith, violates a certain provision of this Act is not liable for the  
30 violation under certain circumstances; altering a certain period of limitations;  
31 defining certain terms; making a technical correction; and generally relating to  
32 home mortgage loans.

33 BY repealing and reenacting, without amendments,

34 Article - Commercial Law

1 Section 12-1009(e)  
2 Annotated Code of Maryland  
3 (2005 Replacement Volume)

4 BY repealing and reenacting, with amendments,  
5 Article - Commercial Law  
6 Section 12-1019  
7 Annotated Code of Maryland  
8 (2005 Replacement Volume)

9 BY adding to  
10 Article - Commercial Law  
11 Section 12-1201 through 12-1208, inclusive, to be under the new subtitle  
12 "Subtitle 12. Consumer Loans - Home Mortgage Loans"  
13 Annotated Code of Maryland  
14 (2005 Replacement Volume)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Commercial Law**

18 12-1009.

19 (e) In connection with any prepayment of any loan by a consumer borrower,  
20 the credit grantor may not impose any prepayment charge.

21 12-1019.

22 (A) [An] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN  
23 action for A violation of this subtitle may not be brought more than 6 months after the  
24 loan is satisfied.

25 (B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO AN ACTION FOR A  
26 VIOLATION OF § 12-1009(E) OF THIS SUBTITLE BROUGHT IN CONNECTION WITH A  
27 LOAN MADE TO A CONSUMER BORROWER AND SECURED BY A LIEN ON RESIDENTIAL  
28 REAL PROPERTY.

29 SUBTITLE 12. CONSUMER LOANS - HOME MORTGAGE LOANS.

30 12-1201.

31 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
32 INDICATED.

33 (B) "AFFILIATE" MEANS A COMPANY THAT CONTROLS, IS CONTROLLED BY, OR  
34 IS UNDER COMMON CONTROL WITH ANOTHER COMPANY, AS SET FORTH IN THE  
35 FEDERAL BANK HOLDING COMPANY ACT OF 1956.

1 (C) "BONA FIDE LOAN DISCOUNT POINTS" MEANS LOAN DISCOUNT POINTS  
2 THAT ARE KNOWINGLY PAID BY THE BORROWER FOR THE PURPOSE OF REDUCING,  
3 AND WHICH IN FACT RESULT IN A BONA FIDE REDUCTION WITHIN THE FIRST 4  
4 YEARS OF SCHEDULED LOAN PAYMENTS, THE INTEREST RATE OR TIME-PRICE  
5 DIFFERENTIAL APPLICABLE TO A LOAN, PROVIDED THE AMOUNT OF THE INTEREST  
6 RATE REDUCTION PURCHASED BY THE DISCOUNT POINTS IS EQUAL TO OR EXCEEDS  
7 THE DOLLAR AMOUNT OF LOAN DISCOUNT POINTS PAID BY THE BORROWER.

8 (D) "EXCLUDED DISCOUNT POINTS" MEANS DISCOUNT POINTS UP TO AND  
9 INCLUDING TWO BONA FIDE LOAN DISCOUNT POINTS PAYABLE BY THE BORROWER  
10 IN CONNECTION WITH A LOAN TRANSACTION, BUT ONLY IF THE INTEREST RATE  
11 FROM WHICH THE LOAN'S INTEREST RATE WILL BE DISCOUNTED DOES NOT EXCEED  
12 BY MORE THAN FOUR PERCENTAGE POINTS THE WEEKLY AVERAGE YIELD ON U.S.  
13 TREASURY SECURITIES ADJUSTED TO A CONSTANT MATURITY OF 1 YEAR, AS MADE  
14 AVAILABLE BY THE FEDERAL RESERVE BOARD, AS OF THE WEEK IMMEDIATELY  
15 PRECEDING THE WEEK IN WHICH THE INTEREST RATE FOR THE LOAN IS  
16 ESTABLISHED.

17 (E) "HIGH-COST HOME LOAN" MEANS A HOME LOAN THE TERMS OF WHICH  
18 MEET ONE OR MORE OF THE FOLLOWING CRITERIA:

19 (1) FOR A FIRST LIEN MORTGAGE, THE TRIGGER RATE IS EQUAL TO OR  
20 EXCEEDS BY FIVE OR MORE PERCENTAGE POINTS THE WEEKLY AVERAGE YIELD ON  
21 U.S. TREASURY SECURITIES ADJUSTED TO A CONSTANT MATURITY OF 1 YEAR, AS  
22 MADE AVAILABLE BY THE FEDERAL RESERVE BOARD, AS OF THE WEEK  
23 IMMEDIATELY PRECEDING THE WEEK IN WHICH THE INTEREST RATE FOR THE LOAN  
24 IS ESTABLISHED;

25 (2) FOR A SUBORDINATE MORTGAGE LIEN OR A MORTGAGE SECURED  
26 SOLELY BY A SECURITY INTEREST IN A MANUFACTURED HOME, THE TRIGGER RATE  
27 IS EQUAL TO OR EXCEEDS BY SEVEN OR MORE PERCENTAGE POINTS THE WEEKLY  
28 AVERAGE YIELD ON U.S. TREASURY SECURITIES ADJUSTED TO A CONSTANT  
29 MATURITY OF 1 YEAR, AS MADE AVAILABLE BY THE FEDERAL RESERVE BOARD, AS OF  
30 THE WEEK IMMEDIATELY PRECEDING THE WEEK IN WHICH THE INTEREST RATE  
31 FOR THE LOAN IS ESTABLISHED;

32 (3) THE TOTAL POINTS AND FEES ON THE LOAN, LESS ANY EXCLUDED  
33 DISCOUNT POINTS, EXCEED:

34 (I) 3% OF THE TOTAL LOAN AMOUNT IF THE TOTAL LOAN AMOUNT  
35 IS \$30,000 OR MORE; OR

36 (II) THE LESSER OF 5% OF THE TOTAL LOAN AMOUNT OR \$900 IF  
37 THE TOTAL LOAN AMOUNT IS LESS THAN \$30,000;

38 (4) (I) FOR A FIRST LIEN MORTGAGE, THE TRIGGER RATE IS EQUAL TO  
39 OR EXCEEDS BY FOUR OR MORE PERCENTAGE POINTS THE WEEKLY AVERAGE YIELD  
40 ON U.S. TREASURY SECURITIES ADJUSTED TO A CONSTANT MATURITY OF 1 YEAR, AS  
41 MADE AVAILABLE BY THE FEDERAL RESERVE BOARD, AS OF THE WEEK

1 IMMEDIATELY PRECEDING THE WEEK IN WHICH THE INTEREST RATE FOR THE LOAN  
2 IS ESTABLISHED; AND

3 (II) THE TOTAL POINTS AND FEES ON THE LOAN, LESS ANY  
4 EXCLUDED DISCOUNT POINTS, EXCEED:

5 1. 2.75% OF THE TOTAL LOAN AMOUNT IF THE TOTAL LOAN  
6 AMOUNT IS \$30,000 OR MORE; OR

7 2. THE LESSER OF 4% OF THE TOTAL LOAN AMOUNT OR \$900  
8 IF THE TOTAL LOAN AMOUNT IS LESS THAN \$30,000; OR

9 (5) (I) FOR A SUBORDINATE MORTGAGE LIEN OR A MORTGAGE  
10 SECURED SOLELY BY A SECURITY INTEREST IN A MANUFACTURED HOME, THE  
11 TRIGGER RATE IS EQUAL TO OR EXCEEDS BY SIX OR MORE PERCENTAGE POINTS THE  
12 WEEKLY AVERAGE YIELD ON U.S. TREASURY SECURITIES ADJUSTED TO A CONSTANT  
13 MATURITY OF 1 YEAR, AS MADE AVAILABLE BY THE FEDERAL RESERVE BOARD, AS OF  
14 THE WEEK IMMEDIATELY PRECEDING THE WEEK IN WHICH THE INTEREST RATE  
15 FOR THE LOAN IS ESTABLISHED; AND

16 (II) THE TOTAL POINTS AND FEES ON THE LOAN, LESS ANY  
17 EXCLUDED DISCOUNT POINTS, EXCEED:

18 1. 2.75% OF THE TOTAL LOAN AMOUNT IF THE TOTAL LOAN  
19 AMOUNT IS \$30,000 OR MORE; OR

20 2. THE LESSER OF 4% OF THE TOTAL LOAN AMOUNT OR \$900  
21 IF THE TOTAL LOAN AMOUNT IS LESS THAN \$30,000.

22 (F) (1) "HOME LOAN" MEANS A LOAN:

23 (I) THE PRINCIPAL AMOUNT OF WHICH DOES NOT EXCEED THE  
24 CONFORMING LOAN SIZE LIMIT FOR A SINGLE-FAMILY DWELLING, AS ESTABLISHED  
25 FROM TIME TO TIME BY THE FEDERAL NATIONAL MORTGAGE ASSOCIATION; AND

26 (II) THAT IS SECURED BY A MORTGAGE OR DEED OF TRUST ON  
27 REAL PROPERTY ON WHICH THERE IS OR WILL BE LOCATED A STRUCTURE THAT IS  
28 DESIGNED PRINCIPALLY FOR OCCUPANCY BY ONE TO FOUR FAMILIES AND THAT IS  
29 OR WILL BE OCCUPIED BY THE BORROWER AS THE BORROWER'S PRINCIPAL  
30 DWELLING.

31 (2) "HOME LOAN" INCLUDES AN OPEN-END CREDIT PLAN.

32 (3) "HOME LOAN" DOES NOT INCLUDE A REVERSE MORTGAGE  
33 TRANSACTION.

34 (G) "LENDER" MEANS A PERSON:

35 (1) THAT EXTENDS CONSUMER CREDIT THAT IS SUBJECT TO A FINANCE  
36 CHARGE OR THAT IS PAYABLE IN MORE THAN FOUR INSTALLMENTS; AND

1 (2) TO WHICH THE OBLIGATION IS PAYABLE.

2 (H) (1) "POINTS AND FEES" MEANS:

3 (I) ALL ITEMS REQUIRED TO BE DISCLOSED UNDER 12 C.F.R. PART  
4 226.4(A) AND (B), EXCEPT INTEREST OR THE TIME-PRICE DIFFERENTIAL;

5 (II) ALL CHARGES FOR ITEMS LISTED UNDER 12 C.F.R. PART  
6 226.4(C)(7), BUT ONLY IF THE LENDER RECEIVES DIRECT OR INDIRECT  
7 COMPENSATION IN CONNECTION WITH THE CHARGE, OR THE CHARGE IS PAID TO AN  
8 AFFILIATE LENDER;

9 (III) ALL COMPENSATION PAID, DIRECTLY OR INDIRECTLY, TO A  
10 MORTGAGE BROKER, INCLUDING A BROKER THAT ORIGINATES A HOME LOAN IN ITS  
11 OWN NAME THROUGH AN ADVANCE OF FUNDS AND SUBSEQUENTLY ASSIGNS THE  
12 HOME LOAN TO THE PERSON ADVANCING THE FUNDS;

13 (IV) THE COST OF ALL PREMIUMS PAID FOR A CREDIT LIFE, CREDIT  
14 DISABILITY, CREDIT UNEMPLOYMENT, CREDIT PROPERTY, OR OTHER CREDIT LIFE OR  
15 HEALTH INSURANCE POLICY, DEBT CANCELLATION AGREEMENT, OR DEBT  
16 SUSPENSION AGREEMENT;

17 (V) THE MAXIMUM PREPAYMENT FEES OR PENALTIES THAT MAY  
18 BE CHARGED OR COLLECTED UNDER THE TERMS OF THE LOAN; AND

19 (VI) FOR OPEN-END LOANS, THE SUM OF THE TOTAL FEES  
20 CHARGED AT CLOSING PLUS THE MAXIMUM ADDITIONAL FEES THAT MAY BE  
21 CHARGED IN ACCORDANCE WITH THE TERMS OF THE LOAN.

22 (2) "POINTS AND FEES" DO NOT INCLUDE:

23 (I) TAXES, FILING FEES, RECORDING FEES, AND OTHER CHARGES  
24 AND FEES PAID OR TO BE PAID TO PUBLIC OFFICIALS FOR DETERMINING THE  
25 EXISTENCE OF OR FOR PERFECTING, RELEASING, OR SATISFYING A SECURITY  
26 INTEREST;

27 (II) FEES AND CHARGES THAT ARE PAID TO A PERSON OTHER THAN  
28 A LENDER, AN AFFILIATE OF THE LENDER, A MORTGAGE BROKER, OR AN AFFILIATE  
29 OF THE MORTGAGE BROKER, AND NO PART OF WHICH IS RETAINED BY A LENDER, AN  
30 AFFILIATE OF THE LENDER, A MORTGAGE BROKER, OR AN AFFILIATE OF THE  
31 MORTGAGE BROKER, FOR:

- 32 1. A FLOOD CERTIFICATION;
- 33 2. AN INSPECTION FOR PEST INFESTATION;
- 34 3. A FLOOD DETERMINATION STUDY;
- 35 4. AN APPRAISAL;
- 36 5. AN INSPECTION PRIOR TO CLOSING;



1 (B) (1) A LENDER MAY CHARGE A LATE PAYMENT FEE WITH RESPECT TO A  
2 HOME LOAN ONLY IF:

3 (I) THE LATE PAYMENT FEE FOR A PAST DUE PAYMENT DOES NOT  
4 EXCEED 4% OF THE AMOUNT OF THE PAST DUE PAYMENT;

5 (II) THE PAST DUE PAYMENT IS PAST DUE FOR 20 DAYS OR MORE;  
6 AND

7 (III) THE LENDER NOTIFIES THE BORROWER WITHIN 45 DAYS  
8 AFTER THE PAYMENT DUE DATE THAT A LATE PAYMENT CHARGE HAS BEEN  
9 IMPOSED.

10 (2) A LATE PAYMENT FEE MAY NOT BE CHARGED MORE THAN ONCE FOR  
11 A SINGLE PAST DUE PAYMENT.

12 (3) IF A LATE PAYMENT FEE IS DEDUCTED FROM A SUBSEQUENT  
13 PAYMENT ON A LOAN, THE DEDUCTION FROM THE SUBSEQUENT PAYMENT MAY NOT  
14 CAUSE A DEFAULT ON THAT SUBSEQUENT PAYMENT.

15 (4) IF A LATE PAYMENT FEE HAS BEEN CHARGED FOR A PAST DUE  
16 PAYMENT, ANY SUBSEQUENT PAYMENT THAT WOULD HAVE BEEN TIMELY AND  
17 SUFFICIENT BUT FOR THE PREVIOUS PAST DUE PAYMENT MAY NOT BE SUBJECT TO  
18 A LATE PAYMENT FEE.

19 (5) A LATE PAYMENT FEE MAY NOT BE COLLECTED IF THE BORROWER  
20 INFORMS THE LENDER THAT NONPAYMENT OF AN INSTALLMENT IS IN DISPUTE AND  
21 PRESENTS PROOF OF PAYMENT WITHIN 45 DAYS AFTER RECEIPT OF NOTICE OF THE  
22 IMPOSITION OF A LATE PAYMENT FEE.

23 (C) (1) IF A BORROWER REQUESTS A PAYOFF BALANCE FROM A LENDER,  
24 THE LENDER SHALL PROVIDE THE PAYOFF BALANCE TO THE BORROWER WITHIN 7  
25 BUSINESS DAYS AFTER THE REQUEST IS RECEIVED.

26 (2) A LENDER MAY NOT CHARGE A FEE FOR:

27 (I) PROVIDING THE PAYOFF BALANCE FOR A HOME LOAN; OR

28 (II) PROVIDING A RELEASE ON PREPAYMENT OF THE HOME LOAN.

29 (D) A LENDER MAY NOT RECOMMEND OR ENCOURAGE DEFAULT ON AN  
30 EXISTING LOAN OR OTHER DEBT PRIOR TO OR IN CONNECTION WITH THE CLOSING  
31 OR PLANNED CLOSING OF A HOME LOAN THAT REFINANCES ALL OR ANY PART OF  
32 THE EXISTING LOAN OR DEBT.

33 (E) A LENDER MAY NOT MAKE A HIGH-COST HOME LOAN IF:

34 (1) THE HIGH-COST HOME LOAN PAYS OFF ALL OR PART OF AN  
35 EXISTING HOME LOAN; AND

1           (2)     THE BORROWER DOES NOT RECEIVE A REASONABLE AND TANGIBLE  
2 NET BENEFIT FROM THE NEW HOME LOAN CONSIDERING ALL THE CIRCUMSTANCES,  
3 INCLUDING THE TERMS OF THE HIGH-COST HOME LOAN, THE REFINANCED DEBT,  
4 THE COST OF THE NEW HOME LOAN, AND THE BORROWER'S CIRCUMSTANCES.

5     (F)     A LENDER MAY NOT MAKE A HIGH-COST HOME LOAN IF:

6           (1)     THE HIGH-COST HOME LOAN REFINANCES AN EXISTING HOME  
7 LOAN THAT:

8                   (I)     IS A SPECIAL MORTGAGE ORIGINATED, SUBSIDIZED, OR  
9 GUARANTEED BY OR THROUGH A STATE, TRIBAL, OR LOCAL GOVERNMENT OR A  
10 NOT-FOR-PROFIT ORGANIZATION; AND

11                   (II)    CONTAINS NONSTANDARD PAYMENT TERMS BENEFICIAL TO  
12 THE BORROWER OR TERMS UNDER WHICH NO PAYMENTS ARE REQUIRED UNDER  
13 SPECIFIED CONDITIONS; AND

14           (2)     AS A RESULT OF THE REFINANCING, THE BORROWER WILL LOSE  
15 ONE OR MORE OF THE BENEFITS OF THE SPECIAL MORTGAGE.

16     (G)     (1)     A LENDER MAY NOT MAKE A HIGH-COST HOME LOAN UNLESS THE  
17 LENDER REASONABLY BELIEVES AT THE TIME THE HIGH-COST HOME LOAN IS  
18 CONSUMMATED THAT ONE OR MORE OF THE BORROWERS, WHEN CONSIDERED  
19 INDIVIDUALLY OR COLLECTIVELY, WILL BE ABLE TO MAKE THE SCHEDULED  
20 PAYMENTS TO REPAY THE OBLIGATION BASED ON A CONSIDERATION OF THE  
21 BORROWERS' CURRENT AND EXPECTED INCOME, CURRENT OBLIGATIONS,  
22 EMPLOYMENT STATUS, AND OTHER FINANCIAL RESOURCES, OTHER THAN THE  
23 OBLIGOR'S EQUITY IN THE DWELLING THAT SECURES REPAYMENT OF THE  
24 HIGH-COST HOME LOAN.

25           (2)     A BORROWER IS PRESUMED TO BE ABLE TO MAKE SCHEDULED  
26 PAYMENTS IF:

27                   (I)     AT THE TIME THE HIGH-COST HOME LOAN IS MADE OR AT THE  
28 TIME OF THE FIRST RATE ADJUSTMENT IN THE CASE OF A LOWER INTRODUCTORY  
29 INTEREST RATE, THE BORROWER'S SCHEDULED MONTHLY PAYMENTS ON THE  
30 HIGH-COST HOME LOAN, INCLUDING PRINCIPAL, INTEREST, TAXES, INSURANCE,  
31 AND ASSESSMENTS, COMBINED WITH THE SCHEDULED PAYMENTS FOR ALL OTHER  
32 DEBT, DO NOT EXCEED 50% OF THE BORROWER'S DOCUMENTED AND VERIFIED  
33 MONTHLY GROSS INCOME; AND

34                   (II)    THE BORROWER HAS SUFFICIENT RESIDUAL INCOME, AS  
35 DEFINED IN THE GUIDELINES ESTABLISHED IN 38 C.F.R. PART 36.4337(E) AND VA  
36 FORM 26-6393, TO PAY ESSENTIAL MONTHLY EXPENSES AFTER PAYING THE  
37 SCHEDULED MONTHLY PAYMENTS AND ANY ADDITIONAL DEBT.

38     (H)     A LENDER MAY NOT MAKE A HIGH-COST HOME LOAN WITHOUT FIRST  
39 RECEIVING CERTIFICATION FROM AN INDEPENDENT HOUSING OR CREDIT  
40 COUNSELOR APPROVED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN



1 DEVELOPMENT OR THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY  
2 DEVELOPMENT THAT THE BORROWER HAS RECEIVED COUNSELING ON THE  
3 ADVISABILITY OF THE HIGH-COST HOME LOAN TRANSACTION.

4 (I) A LENDER MAY NOT CHARGE A BORROWER A FEE TO MODIFY, RENEW,  
5 EXTEND, OR AMEND A HIGH-COST HOME LOAN OR TO DEFER ANY PAYMENT DUE  
6 UNDER THE TERMS OF THE HIGH-COST HOME LOAN.

7 (J) A LENDER MAY NOT PAY A CONTRACTOR UNDER A HOME IMPROVEMENT  
8 CONTRACT FROM THE PROCEEDS OF A HIGH-COST HOME LOAN OTHER THAN:

9 (1) BY AN INSTRUMENT PAYABLE SOLELY TO THE BORROWER; OR

10 (2) AT THE ELECTION OF THE BORROWER, THROUGH A THIRD-PARTY  
11 ESCROW AGENT IN ACCORDANCE WITH TERMS ESTABLISHED IN A WRITTEN  
12 AGREEMENT SIGNED BY THE BORROWER AND THE CONTRACTOR PRIOR TO THE  
13 DISBURSEMENT.

14 (K) (1) A LENDER FINANCING A HIGH-COST HOME LOAN MAY NOT STEER A  
15 BORROWER INTO A LOAN WITH A HIGHER COST THAN THE LOWEST COST CATEGORY  
16 OF LOAN FOR WHICH THE BORROWER COULD QUALIFY WITH THE LENDER OR ANY  
17 OF THE LENDER'S AFFILIATES.

18 (2) A BROKER ARRANGING A HIGH-COST HOME LOAN MAY NOT STEER A  
19 BORROWER INTO A LOAN WITH A HIGHER COST THAN THE LOWEST COST CATEGORY  
20 OF LOAN AVAILABLE TO THE BORROWER FROM THE LENDERS WITH WHICH THE  
21 BROKER REGULARLY DOES BUSINESS.

22 12-1203.

23 (A) (1) A HIGH-COST HOME LOAN MAY NOT INCLUDE A PROVISION THAT  
24 INCREASES THE INTEREST RATE AFTER DEFAULT.

25 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO INTEREST  
26 RATE CHANGES IN A VARIABLE RATE HIGH-COST HOME LOAN OTHERWISE  
27 CONSISTENT WITH THE HIGH-COST HOME LOAN'S TERMS, PROVIDED THE CHANGE  
28 IN THE INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF DEFAULT OR THE  
29 ACCELERATION OF THE BORROWER'S INDEBTEDNESS.

30 (B) (1) A HOME LOAN MAY NOT INCLUDE A PROVISION THAT PERMITS THE  
31 LENDER, IN ITS SOLE DISCRETION, TO ACCELERATE THE BORROWER'S  
32 INDEBTEDNESS.

33 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY IF  
34 REPAYMENT OF THE HOME LOAN HAS BEEN ACCELERATED IN GOOD FAITH DUE TO  
35 THE BORROWER'S FAILURE TO COMPLY WITH THE MATERIAL TERMS OF THE HOME  
36 LOAN.

37 (C) THE TERMS OF A HIGH-COST HOME LOAN MAY NOT INCLUDE FINANCING  
38 FOR POINTS AND FEES IN EXCESS OF 3% OF THE TOTAL LOAN AMOUNT.

1 (D) A HIGH-COST HOME LOAN MAY NOT BE SUBJECT TO A PREPAYMENT FEE  
2 OR PENALTY.

3 (E) (1) A HIGH-COST HOME LOAN MAY NOT HAVE A SCHEDULED PAYMENT  
4 THAT IS MORE THAN TWICE THE AVERAGE OF EARLIER SCHEDULED PAYMENTS.

5 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY WHEN THE  
6 PAYMENT SCHEDULE IS ADJUSTED TO THE SEASONAL OR IRREGULAR INCOME OF  
7 THE BORROWER.

8 (F) A HIGH-COST HOME LOAN MAY NOT INCLUDE A TERM:

9 (1) UNDER WHICH THE OUTSTANDING PRINCIPAL BALANCE MAY BE  
10 INCREASED AT ANY TIME BECAUSE THE REGULAR PERIODIC PAYMENTS DO NOT  
11 COVER THE FULL AMOUNT OF THE HIGH-COST HOME LOAN AND THE INTEREST DUE;

12 (2) UNDER WHICH MORE THAN TWO PERIODIC PAYMENTS REQUIRED  
13 UNDER THE HIGH-COST HOME LOAN ARE CONSOLIDATED AND PAID IN ADVANCE  
14 FROM THE PROCEEDS OF THE HIGH-COST HOME LOAN PROVIDED TO THE  
15 BORROWER;

16 (3) THAT AUTHORIZES A LENDER TO REQUIRE A BORROWER TO ASSERT  
17 ANY CLAIM OR DEFENSE IN A FORUM THAT IS LESS CONVENIENT, MORE COSTLY, OR  
18 MORE DILATORY FOR THE RESOLUTION OF A DISPUTE THAN IN A COURT OF  
19 COMPETENT JURISDICTION;

20 (4) THAT LIMITS ANY CLAIM OR DEFENSE A BORROWER MAY HAVE; OR

21 (5) THAT REQUIRES A BORROWER TO MAKE A BALLOON PAYMENT ON  
22 MATURITY OF THE HIGH-COST HOME LOAN.

23 12-1204.

24 A VIOLATION OF THIS SUBTITLE IS:

25 (1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING  
26 OF TITLE 13 OF THIS ARTICLE; AND

27 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS  
28 CONTAINED IN TITLE 13 OF THIS ARTICLE.

29 12-1205.

30 (A) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE, A  
31 PERSON THAT SUFFERS DAMAGES AS A RESULT OF A VIOLATION OF ANY PROVISION  
32 OF THIS SUBTITLE MAY BRING AN ACTION AGAINST THE PERSON THAT COMMITTED  
33 THE VIOLATION.

34 (B) IN AN ACTION BROUGHT UNDER SUBSECTION (A) OF THIS SECTION, THE  
35 COURT MAY AWARD:

- 1 (1) ACTUAL DAMAGES TO THE AGGRIEVED PARTY;
- 2 (2) STATUTORY DAMAGES EQUAL TO THE FINANCE CHARGES AGREED  
3 TO IN THE HOME LOAN AGREEMENT PLUS 10% OF THE AMOUNT FINANCED;
- 4 (3) PUNITIVE DAMAGES FOR A WILLFUL VIOLATION OF THIS SUBTITLE;  
5 AND
- 6 (4) IF A JUDGMENT IS ENTERED IN FAVOR OF A COMPLAINING PARTY,  
7 ATTORNEY'S FEES TO THE COMPLAINING PARTY.

8 12-1206.

9 (A) IF A LENDER THAT MAKES A HOME LOAN INTENTIONALLY VIOLATES A  
10 PROVISION OF THIS SUBTITLE, THE LENDER IS SUBJECT TO FORFEITURE OF ALL  
11 PRINCIPAL AND INTEREST ON THE HOME LOAN AND ALL FEES AND CHARGES PAID IN  
12 CONNECTION WITH THE HOME LOAN.

13 (B) A TERM OF A HOME LOAN THAT VIOLATES A PROVISION OF THIS SUBTITLE  
14 IS UNENFORCEABLE AND A COURT OF COMPETENT JURISDICTION MAY ISSUE AN  
15 ORDER TO ALTER THE TERM TO BRING THE HOME LOAN INTO COMPLIANCE WITH  
16 THIS SUBTITLE.

17 (C) THE RIGHTS OF RESCISSION GRANTED UNDER 15 U.S.C. § 1601, ET. SEQ.,  
18 FOR VIOLATIONS OF THAT LAW AND ALL OTHER REMEDIES PROVIDED IN THIS  
19 ARTICLE SHALL BE AVAILABLE TO A BORROWER BY WAY OF RECOUPMENT AGAINST  
20 A PARTY FORECLOSING ON THE HOME LOAN OR COLLECTING ON THE HOME LOAN AT  
21 ANY TIME DURING THE TERM OF THE HOME LOAN.

22 12-1207.

23 (A) A BORROWER MAY ASSERT A VIOLATION OF THIS SUBTITLE AS A DEFENSE,  
24 BAR, OR COUNTERCLAIM TO ANY DEFAULT ACTION, COLLECTION ACTION, OR  
25 JUDICIAL OR NONJUDICIAL FORECLOSURE ACTION IN CONNECTION WITH A HOME  
26 LOAN.

27 (B) ALL AFFIRMATIVE CLAIMS AND DEFENSES THAT A BORROWER MAY  
28 ASSERT AGAINST A LENDER OR A BROKER OF A HOME LOAN SHALL BE AVAILABLE TO  
29 A PERSON THAT PURCHASES OR IS OTHERWISE ASSIGNED THE HOME LOAN.

30 12-1208.

31 (A) (1) IN THIS SECTION, "BONA FIDE ERROR" INCLUDES A CLERICAL,  
32 CALCULATION, COMPUTER MALFUNCTION, PROGRAMMING, OR PRINTING ERROR.

33 (2) "BONA FIDE ERROR" DOES NOT INCLUDE AN ERROR OF LEGAL  
34 JUDGMENT WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS SUBTITLE.

1 (B) A LENDER THAT MAKES A HOME LOAN AND THAT, ACTING IN GOOD FAITH,  
2 VIOLATES A PROVISION OF THIS SUBTITLE, IS NOT LIABLE FOR THE VIOLATION IF  
3 THE LENDER ESTABLISHES THAT:

4 (1) WITHIN 30 DAYS AFTER THE HOME LOAN CLOSING AND BEFORE  
5 RECEIVING ANY NOTICE FROM THE BORROWER OF THE LENDER'S FAILURE TO  
6 COMPLY WITH THIS SUBTITLE, THE LENDER HAS MADE:

7 (I) APPROPRIATE RESTITUTION TO THE BORROWER; AND

8 (II) ADJUSTMENTS TO THE TERMS OF THE HOME LOAN TO BRING  
9 THE HOME LOAN INTO COMPLIANCE WITH THIS SUBTITLE; OR

10 (2) (I) WITHIN 60 DAYS AFTER THE HOME LOAN CLOSING AND  
11 BEFORE RECEIVING ANY NOTICE FROM THE BORROWER OF THE LENDER'S FAILURE  
12 TO COMPLY WITH THIS SUBTITLE, THE LENDER HAS MADE:

13 1. APPROPRIATE RESTITUTION TO THE BORROWER; AND

14 2. ADJUSTMENTS TO THE TERMS OF THE HOME LOAN TO  
15 BRING THE HOME LOAN INTO COMPLIANCE WITH THIS SUBTITLE; AND

16 (II) THE LENDER'S FAILURE TO COMPLY WITH THIS SUBTITLE WAS  
17 NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR, NOTWITHSTANDING  
18 THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO AVOID THE BONA  
19 FIDE ERROR.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2006.