

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 777

(Senator Gladden)

Finance

Commercial Law - Credit Regulation - Home Mortgage Loans

This bill establishes standards for “high-cost” home loans and repeals the six-month limit for actions to enforce the prohibition against a prepayment penalty in most mortgage loans to consumer borrowers.

Fiscal Summary

State Effect: Special fund expenditures could increase by approximately \$486,000 in FY 2007 to ensure compliance with the bill’s provisions. Out-years reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	486,000	594,800	626,400	660,200	696,300
Net Effect	(\$486,000)	(\$594,800)	(\$626,400)	(\$660,200)	(\$696,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Under the bill, a high-cost home loan is a home loan that meets one of several criteria based on interest rates, fees, or costs associated with the loan. A lender may not finance, directly or indirectly, a credit life, credit disability, credit property, credit unemployment, or other credit life or health insurance policy or debt cancellation

or debt suspension agreement through a home loan. Premiums that are not included in the loan principal but are calculated and paid on a monthly basis are not considered financed by the lender.

A lender may charge a late payment fee on a home loan only if: (1) the fee does not exceed 4% of the past due amount; (2) the amount is past due for 20 or more days; and (3) the lender notifies the borrower within 45 days after the due date that a late charge has been imposed. A late payment may not be charged more than once for a single past due payment.

A lender may not: (1) make a high-cost home loan that refinances an existing home loan under specified circumstances; (2) make a high-cost home loan unless the lender reasonably believes that one or more of the borrowers will be able to make the scheduled payments; (3) make a high-cost home loan without first receiving certification that the borrower has received counseling on the advisability of the high-cost home loan transaction; or (4) charge a borrower a fee to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the loan's terms.

A lender may not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless specified conditions are met. A lender may not steer a borrower into a loan with a higher cost than the lowest cost category of loan for which the borrower could qualify with the lender or any of the lender's affiliates.

Generally, a high-cost home loan may not include a provision that increases its interest rate after default or permits the lender, in its sole discretion, to accelerate the borrower's indebtedness.

A high-cost home loan may not be subject to a prepayment fee or penalty, and generally, it may not have a scheduled payment that is more than twice the average of earlier scheduled payments.

A high-cost home loan may not include specified terms limiting borrower rights.

In addition to the remedies available under the Consumer Protection Act, a person who suffers damages as a result of a violation of the bill may bring an action against the violator. In such an action, the court may award: (1) actual damages; (2) statutory damages equaling the finance charge plus 10% of the amount financed; (3) punitive damages for a willful violation; and (4) the complaining party's attorney's fees, if judgment is entered in that party's favor.

A lender that makes a home loan that intentionally violates the bill is subject to forfeiture of the principal, interest, fees, and charges paid in connection with the loan. The rights of rescission under the federal Fair Debt Collection Practices Act and remedies under State commercial law are available to a borrower for recoupment against a party foreclosing the home loan or collecting on it during the term of the loan.

A borrower may assert a violation of the bill as a defense, bar, or counterclaim to a default, collection, or foreclosure action. A person that purchases or is otherwise assigned the home loan may claim all affirmative claims and defenses that a borrower may assert.

A lender that makes a home loan and that, acting in good faith, violates the bill is not liable for the violation if the lender establishes specified conditions.

Current Law: For most mortgage loans to consumer borrowers governed by State law, a credit grantor may charge and collect interest at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides, up to a maximum of 24% per year. The credit grantor may not impose a prepayment charge.

A mortgage lender, for small consumer loans, secondary mortgage loans, and closed end credit loans secured by real property, may not: (1) finance single premium credit health, credit life, or credit involuntary unemployment benefit insurance as part of a loan; or (2) make loans without giving due regard to the borrower's ability to repay the loan in accordance with its terms. Mortgage lenders must provide potential borrowers with a recommendation that they seek home buyer education or housing counseling and information on where to obtain the counseling.

For a mortgage loan that is secured by a secondary lien on residential real property, the credit grantor may impose a balloon payment at maturity; however, on request, a consumer borrower may postpone the balloon payment for a period of up to six months.

Violations of these provisions may be reported to the Commissioner of Financial Regulation for enforcement. The commissioner may hold hearings, issue cease and desist orders, and impose penalties. A credit grantor, or its officer or employee, that violates these provisions willfully, is guilty of a misdemeanor, subject to a fine of up to \$1,000 and/or imprisonment of up to one year.

The commissioner is required to examine licensees once every three years.

Background: Under federal regulations, nationally chartered banks and their operating subsidiaries are exempt from state consumer protection laws. In 2005, a nationally chartered bank and its operating subsidiary successfully sued the commissioner to enjoin enforcement of Maryland’s consumer protection laws against the operating subsidiary.

State Expenditures: Special fund expenditures could increase by an estimated \$486,038 in fiscal 2007, which accounts for the bill’s October 1, 2006 effective date. This estimate reflects the cost of hiring seven financial examiners, one administrator, and one office secretary to enforce the bill’s provisions. It includes salaries, fringe benefits, one-time start-up costs, examiner travel, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- there are approximately 4,500 State chartered mortgage lenders whose loans might be subject to regulation under the bill;
- in order to ensure compliance with the bill’s requirements, the examination of each licensee would be lengthened from two to three days; and
- each licensee must be examined once every three years.

Positions	9
Salaries and Fringe Benefits	\$383,845
Examiner Travel	37,500
New Equipment and Other Operating Expenses	<u>64,693</u>
Total FY 2007 State Expenditures	\$486,038

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill could lengthen the examinations of small business mortgage lenders and could prohibit the lending practices of some small business lenders.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2006
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