

# SENATE BILL 594

I2, N1

8lr1855

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By: **Senator Haines**

Introduced and read first time: February 1, 2008

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation - Mortgage Lending - Prepayment Penalties**

3 FOR the purpose of prohibiting a lender from requiring or authorizing the imposition  
4 of a prepayment penalty, fee, premium, or other charge in connection with  
5 certain subprime loans; defining certain terms; providing for the application of  
6 this Act; and generally relating to mortgage lending.

7 BY repealing and reenacting, with amendments,  
8 Article - Commercial Law  
9 Section 12-105  
10 Annotated Code of Maryland  
11 (2005 Replacement Volume and 2007 Supplement)

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

14 **Article - Commercial Law**

15 12-105.

16 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
17 MEANINGS INDICATED.

18 (2) "ANNUAL PERCENTAGE RATE" HAS THE MEANING STATED IN  
19 12 C.F.R. PART 226.

20 (3) "FULLY INDEXED RATE" MEANS THE INDEX RATE APPLICABLE  
21 TO A MORTGAGE LOAN FOR A RESIDENTIAL REAL PROPERTY AT THE TIME IT IS  
22 ORIGINATED, PLUS THE MARGIN THAT WILL APPLY AFTER THE EXPIRATION OF  
23 AN INTRODUCTORY INTEREST RATE.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           **(4) “MORTGAGE LOAN” HAS THE MEANING STATED IN § 11-501**  
2 **OF THE FINANCIAL INSTITUTIONS ARTICLE.**

3           **(5) “RESIDENTIAL REAL PROPERTY” MEANS OWNER-OCCUPIED**  
4 **REAL PROPERTY HAVING A DWELLING ON IT DESIGNED PRINCIPALLY AS A**  
5 **RESIDENCE WITH ACCOMMODATIONS FOR NOT MORE THAN FOUR FAMILIES.**

6           **(6) “SUBPRIME LOAN” MEANS:**

7                   **(I) IN THE CASE OF AN ADJUSTABLE RATE MORTGAGE**  
8 **LOAN SECURED BY A FIRST LIEN ON RESIDENTIAL REAL PROPERTY THAT CAN**  
9 **INCREASE IN INTEREST RATE BUT NOT DECREASE IN INTEREST RATE BELOW**  
10 **THE FULLY INDEXED RATE AT THE TIME OF ORIGINATION, A MORTGAGE LOAN**  
11 **FOR WHICH THE ANNUAL PERCENTAGE RATE IS GREATER THAN 2 PERCENTAGE**  
12 **POINTS ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING**  
13 **COMPARABLE PERIODS OF MATURITY:**

14                           **1. AS OF THE 15TH DAY OF THE PRECEDING MONTH**  
15 **IF THE RATE IS SET BETWEEN THE 1ST AND 14TH DAY OF THE MONTH; AND**

16                           **2. AS OF THE 15TH DAY OF THE CURRENT MONTH IF**  
17 **THE RATE IS SET ON OR AFTER THE 15TH DAY; AND**

18                   **(II) FOR ALL OTHER MORTGAGE LOANS SECURED BY A**  
19 **FIRST LIEN ON RESIDENTIAL REAL PROPERTY, A MORTGAGE LOAN FOR WHICH**  
20 **THE ANNUAL PERCENTAGE RATE IS GREATER THAN 3 PERCENTAGE POINTS**  
21 **ABOVE THE YIELD ON UNITED STATES TREASURY SECURITIES HAVING**  
22 **COMPARABLE PERIODS OF MATURITY:**

23                           **1. AS OF THE 15TH DAY OF THE PRECEDING MONTH**  
24 **IF THE RATE IS SET BETWEEN THE 1ST AND THE 14TH DAY OF THE MONTH; AND**

25                           **2. AS OF THE 15TH DAY OF THE CURRENT MONTH IF**  
26 **THE RATE IS SET ON OR AFTER THE 15TH DAY.**

27           **[(a)] (B) Fees and charges collected at the direction of and actually paid to a**  
28 **government or governmental agency may be collected and are not interest under this**  
29 **subtitle.**

30           **[(b)] (C) [If] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**  
31 **SECTION, IF the loan contract provides for them, the following fees and charges also**  
32 **may be collected and are not interest under this subtitle:**

1 (1) A service charge for investigation and the continued servicing of  
2 collateral for a commercial loan secured by inventory or accounts receivable;

3 (2) A service charge made by a broker or dealer dealing in investment  
4 securities if:

5 (i) Money is advanced on the security of pledged investment  
6 securities; and

7 (ii) Services are rendered in the collection, crediting, and  
8 disbursement of income on the investment securities and in the furnishing of income  
9 tax and other information in connection with that income;

10 (3) A delinquent or late charge of the greater of \$2 or 5 percent of the  
11 total amount of any delinquent or late periodic installment of principal and interest, if:

12 (i) The delinquency has continued for at least 15 calendar days;  
13 and

14 (ii) A delinquent or late charge has not already been charged for  
15 the same delinquency; and

16 (4) A prepayment charge or penalty on a prepayment of the unpaid  
17 principal balance of the loan, if the loan is secured by a home, by a combination of  
18 home and business property, or by agricultural property, or if the loan is a commercial  
19 loan not in excess of \$5,000, provided that the charge or penalty:

20 (i) May be imposed only on prepayments made within three  
21 years from the date the loan is made; and

22 (ii) May not exceed an amount equal to two months' advance  
23 interest on the aggregate amount of all prepayments made in any 12-month period in  
24 excess of one third of the amount of the original loan.

25 **(D) (1) IN CONNECTION WITH A SUBPRIME LOAN, A LENDER MAY NOT**  
26 **REQUIRE OR AUTHORIZE THE IMPOSITION OF A PENALTY, FEE, PREMIUM, OR**  
27 **OTHER CHARGE IF THE SUBPRIME LOAN IS PREPAID IN WHOLE OR IN PART.**

28 **(2) THE PROHIBITION UNDER PARAGRAPH (1) OF THIS**  
29 **SUBSECTION DOES NOT APPLY TO A SUBPRIME LOAN WITH A PRINCIPAL**  
30 **AMOUNT THAT EXCEEDS THE CONFORMING SUBPRIME LOAN SIZE LIMIT FOR A**  
31 **SINGLE FAMILY DWELLING AS ESTABLISHED FROM TIME TO TIME BY THE**  
32 **FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

33 [(c)] (E) The following charges, if actual expenses of the lender, also may be  
34 collected and, if not retained by him, are not interest under this subtitle:

1           (1) Charges by the lender's attorney for service rendered in connection  
2 with the preparation, closing, or disbursement of the loan;

3           (2) Charges for the payment of any property expense, tax, or  
4 governmental charge; and

5           (3) Charges for the payment of any premium and cost for insuring:

6                   (i) The lender against loss or liability on or in connection with  
7 the loan; or

8                   (ii) The life or health of the borrower.

9           [(d)] (F) Fees and charges otherwise includable as interest under this  
10 subtitle paid by a developer to the lender for the purpose of making permanent loans  
11 available to home purchasers are not interest under this subtitle. These fees and  
12 charges may not be charged to the home purchaser unless they are charged as interest  
13 and do not violate § 12-108 of this subtitle.

14           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
15 construed to apply only prospectively and may not be applied or interpreted to have  
16 any effect on or application to any mortgage loan entered into before the effective date  
17 of this Act.

18           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2008.