

Butera & Andrews

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 2

09/19/02 Version

CONCEPT¹	NHEMA Staff Draft Concepts	Connecticut HB 6131	Connecticut HB 5003	Connecticut HB 5070	District of Columbia 13-262	Florida HB 747 / SB 938	Georgia SB 70	Atlanta Resolution 01-R-0462	Atlanta Ordinance 01-O-0745	Atlanta Ordinance 01-O-0843	Atlanta Ordinance 01-O-1092	Atlanta Ordinance 01-O-1448	Atlanta Resolution 01-R-1288	DeKalb County Ordinance	Illinois HB 0047	Illinois HB 1161	Illinois 25 Ill. Reg. ??? (JCAR/OBRE)
Date of Introduction (i), Current Status, or Date of Enactment (e)		01/18/01(i) 05/31/01(e)	01/03/01(i) dead	01/05/01(i) dead	4/3/01(effective day) (some provisions effective on the earlier of 60 days after the date rules are promulgated or 150 days after the effective day of the Act) On November 27, 2001, the law was suspended for the period of 4 months.	03/06/01(i) dead	01/25/01(i) dead	03/05/01(i) 08/06/01(e)	05/16/01(i) dead	05/01(i) 09/17/01(e)	07/02/01(i) dead	????? 09/17/01(e) but preliminary injunction enjoining the enforcement of the ordinance was granted	08/06/01(i) dead	05/22/01(i) 06/26/01(e), but preliminary injunction enjoining the enforcement of the ordinance was granted on 08/21/01	01/10/01(i) dead	05/15/01(i) dead	???? 4/17/01(e), effective 5/17/01
Summary of Bills Only Related to Predatory Lending			Establishing a task force to study banking practices in certain communities.	Requiring out-of-state lenders doing business in the state of Connecticut to obtain the same licenses or permits as is required		Licensing bill authorizing sellers of credit life or disability insurance to sell credit insurance. Bill also revises disclosure		Authorizing the Mayor or his designee to request quarterly reports from all Banking Institutions doing business with the	Prohibiting all business entities and tier affiliates, which have been abusive, unscrupulous and misleading in their lending			Creating the Mortgage Fair Lending and Home Improvement Practices Commission to investigate the circumstances surrounding	Canceling any and all outstanding requests for proposal for finance and banking services requiring the use of a bank or financial institution		Allowing for an examination of the licensees with a default rate => 5% to determine whether predatory lending	Placeholder	

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				of Connecticut lenders.		requirements for sales of credit life insurance.		City of Atlanta about their lending practices and potential predatory lending practices; authorizing the Chief Financial Officer to withdraw all funds from said lending institutions if they engage in predatory lending practices.	practices, from doing business with the City of Atlanta.			any mortgage loan or home improvement contract made by the City of Atlanta and to refer cases involving unfair, fraudulent or misleading practices to appropriate authorities.	that have not been awarded, pending the inclusion of compliance language relating to the City’s intention to only do business with banks and financial institutions that do not engage in or affiliate themselves with institutions that engage in predatory lending practices.		practices occurred, and if so, to impose disciplinary actions.		

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Types of Loans Covered by Act		Includes open-end lines of credit but not reverse mortgages.			Applies to “home loans” as defined in Section 101(12) of the Act – a lengthy definition with numerous exceptions.					Applies to loans secured by residential real property in the City of Atlanta with a dwelling for not more than 4 families or a condo unit]. DOES NOT APPLY TO LOANS FOR BUS. PURPOSE OR LOANS > \$150,000 (for HCL) or >\$100,000 (for a threshold loan).	Applies to loans secured by residential real property in the City of Atlanta with a dwelling for not more than 4 families or a condo unit]. DOES NOT APPLY TO LOANS FOR BUS. PURPOSE OR LOANS WITH APR BELOW THAT OF A THRESHOLD LOAN, OR ANY LOAN > \$150,000.							
Triggers																		
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 10%)	(like HOEPA)	(like HOEPA) Interest rate cannot be “unconscionable.”					X (APR > T-bill + 8%)			X for HCL (APR > T-bill + 6% on first lien mortgage, or + 8% on second	X for HCL (APR > T-bill +4%) X for Threshold Loan (excludes			X for HCL (APR > T-bill + 5%); X for a threshold loan (T-bill + 4% < APR				

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										mortgage); X for a threshold loan (T-bill + 4.5 < APR < T-bill + 6.5% on first lien, or APR > T-bill + 8.5% on second lien)	loans for business purpose and loans > \$100,000) (T-bill + 3% < APR > T-bill + 4%)			< T-bill + 5%); disregarding initial or introductory period; if APR varied, consider the maximum rate permitted.				
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$400)	(like HOEPA)						X (fees & points > 6% of the total loan amount or \$465 (annually adjusted to inflation), whichever is greater)			X for HCL (fees & points > 4% of the total loan amount less the amount of such points and fees of the loan amount is \$16,000 or greater; or \$800 if the loan amount is less than \$16,000)	X for HCL (fees & points > 3% of the total loan amount) (definition of p&f includes compensation paid directly or indirectly to broker, all premiums and charges financed for certain insurance, and prepayment penalty)			X (fees & points > 3% of the total loan amount)			X (APR > T-bill + 6% on first lien, or 8% in case of junior lien)	
Other Triggers																		
Restrictions																		X (points &

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on Loan Terms																		fees > 5% of the total loan amount or \$800, whichever is greater)
No Negative Amortization	X	X					X			X	X			X				
No Negative Equity																		X
No Balloons (seasonal/irregular income adjustments typically OK)	X	X (except over 7 yrs. & purchase \$ bridge loans)			X (except over 7 yrs. and 3 months and except when extension option is provided)		X (only if it is more than twice as large as the average of earlier scheduled payments; and if due earlier than 60 months after origination)			X (only if it is more than twice as large as the average of earlier scheduled payments)	X (only if it is more than twice as large as the average of earlier scheduled payments)			X (only if it is more than twice as large as the average of earlier scheduled payments; bridge loans related to the construction of the borrower's principal dwelling are not considered to call for balloon payments)				X
No Call Provision (Debt	X	X (except when repayment			X (except when repayment		X (except when repayment							X (except when repayment				X (only if it is more than twice

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Acceleration)		accelerated by default)			accelerated by default)		accelerated by default)							accelerated by default)				as large as the average of earlier scheduled payments, and if due earlier than 15 years after origination) Does not apply to bridge loans related to principal dwelling.
No Advance Payments	X	X					X (if only two periodic payments consolidated – OK)			X (if only two periodic payments consolidated – OK)	X (if only two periodic payments consolidated – OK)			X (if only two periodic payments consolidated – OK)				
No Modification or Deferral Fees	X	X					X (limited to \$1,000 within 12 months)			X	X			X				
No (or Very Limited) Prepayment Fees or Penalties	X (use CA statute model – no fees except during 1 st 60 mo. & charge not >	X (no penalty for the first 3 years; penalty cannot > 3% of			X		X (permitted only during the first 36 months; cannot exceed 3%			X	X			X (and no fees for informing any person of the balance due to pay off the				

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	6 mo. advance interest on amount prepaid in excess of 20% of original balance)	prepaid balance within one year; no > 2% between one and two years; no > 1% between two and three years. Prepayment penalty not allowed if debts >= 50% of monthly gross income)					in the first year, 2% in the second year, 1% in the third year; OK if borrower given option of choosing similar loan without prepayment fees – then if no prepayment fee loan chosen, interest rate increase <= 1%)							home loan)				
No Increased Interest Rate After Default	X	X (and no default charges in excess of 5% of the amount in default)			X		X			X	X			X				X (no prepayment penalty after expiration of 36-month period following the loan date; no penalty > 3% of total

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																		loan amount if within one year; no penalty > 2% during 2 nd year; or 1% during third year.	
No Mandatory Arbitration Limiting Judicial Relief	X (clause must require proceeding to be in property’s federal judicial district, or as agreed by parties; lend to pay 50% of filing fees over \$150, up to max. of \$250; & comply with rules of nationally recognized arbitration organization)	X (no mandatory arbitration or class action waiver)			X (no mandatory arbitration or advance waiver of the right to seek relief)		X (unless it meets specific criteria in the statute)				X	X			X				
No Bad Faith Avoidance of Restrictions as by					APR is “substantially greater than the														

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Structuring as Open-End Credit Plan					home borrower otherwise would have qualified for” at another lender who would have based APR on the borrower’s credit scores.												
No Enforcement if HCL Contract Leaves Blanks to be Filled In																	
No waiver of a Violation of Predatory Lending Bill																	
Adjustable Rate Mortgages Must Be Tied to Nationally Recognized Lending Rate					X												
Borrower Cannot Be Required to Provide																	

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Property Insurance on Improvements if Insurance Exceeds Their Reasonable Replacement Value																	
Limitation on Sales & Marketing																	
No Lending Without Prior Credit Counseling	X (lender must give strong cautionary notice, saying should consider counseling, & give state-approved list of counselors)						X (only suggested; no lending without timely notice (must be substantially similar to the one specified in the statute)			X (no loan can be made without first receiving notice from a housing counseling agency approved by the Department of Planning and Neighborhood Conservation) (this provision is not applicable to certain banks but is applicable to	X (no loan can be made without first receiving notice from a housing counseling agency approved by the Department of Planning and Neighborhood Conservation) (does not apply to a state chartered bank, a bank and trust company, a			X (notice from a counselor approved by the HUD that the borrower received counseling)			

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										their affiliates)	savings bank, a private bank or a national bank, a State or federally chartered savings and loan association or credit union; it does apply to affiliates)							
No Lending Without Consumer's Own Attorney																		X (only requiring lender to inform borrower about his right to participate in the Mortgage Awareness Program; participation may be waived in writing no less than 2 days after notice)
No Loan							X			X	X (defined			X				

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“Flipping”											as refinancing without reasonable, tangible net benefit)							
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor							X							X (applies to a special mortgage originated, subsidized, or guaranteed by gov.n.t or NGO)				
No Lending Without Due Regard for Repayment Ability (HOEPA applies only in “pattern & practice” cases)	X (handled by limiting financing of points/fees on refinancing within 12 mo.)	X					X (consider current and expected income, current obligations, employment status, and other financial resources)			X (Presumption of ability to repay if monthly payments do not exceed 50% of gross monthly income) (if income >120% of median family income, ability to repay does not have to be	X (rebuttable presumption that the lender made the loan with due regard to repayment ability if the lender followed the debt-to-income ratio and residual income guidelines) (does not apply to a state			X (rebuttable presumption that the lender made the loan with due regard to repayment ability if the borrower’s debt-to-income ratio is 41% or less)				X (no refinancing if additional fees charged within 12 months) of the loan origination)

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										considered) (this provision is not applicable to certain banks but is applicable to their affiliates)	chartered bank, a bank and trust company, a savings bank, a private bank or a national bank, a State or federally chartered savings and loan association or credit union; it does apply to affiliates)							
No Recommending or Encouraging Default on Existing Loan		X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income)			X (Presumption can repay if “sufficient monthly residual income” – according to the Tables of Residual Incomes By Region – Dept. of Vet. Affairs. No presumption of inability		X				X			X				X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income) Specific requirements of how to verify

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					solely b/c not “sufficient monthly residual income”) Lender must also verify the current and expected income and current debts.												ability to repay.	
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value	X (Presumption n can repay if monthly payments do not exceed 55% of gross monthly income; no presumption of inability solely by exceeding 55%)	X			X													
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representatio														X (AND no discriminating against a protected class)				

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n																		
No Lending if loan + other liens exceed 80% of Property Value		X (no advertising that refinancing high-cost debt will reduce monthly payments without also disclosing that refinancing may increase aggregate number of monthly payments and the amount to be repaid)																X (fraudulent or deceptive acts or practices prohibited)
No Lending Without Borrower being Able To Seek Independent Review of the Loan Terms																		
No “Packing” – Selling Unrelated																		X (when and if the General

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Products in Conjunction with HCL																		Assembly appropriate funding for this program)
Lender Can Charge or Receive Money, Thing of Value, or Other Consideration Only if Pledged as Security or Collateral																		
Point & Fee & Financing Limitations																		
No Financing of Points & Fees or Other Charges Payable to 3 rd Parties or of Prepayment Fees or Penalties							X			X (no financing of p&f in excess of 4% of the total loan amount less p&f if the loan is \$16,000 of greater, or \$800 is the loan less than \$16,000) (no 3 rd party	X			X				

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										mentioned)							
No Points & Fees if HCL Refinances Lender's or Affiliate's HCL		X (within two years, the aggregate of p&f cannot > 5% of the principal or \$2,000, whichever is greater)			X (if original loan was made 18 months of less before refinancing and points & fees > 2% of the new home loan principal actually funded, or \$400, and other amount established by a regulation of Mayor)		X				X (plus no refinancing of special mortgages originated, subsidized, or guaranteed by gov'n't or NGO)			X			X (prohibits only financing of point & fees > 6% of total loan amount; does not mention 3 rd party)
No Financing of Credit Insurance (except monthly premium)					Home loan financing credit life, credit disability, credit property or insurance not considered predatory if the insurance plan is approved pursuant to		X			X (no financing of any credit life, credit disability, credit unemployment, or any other life or health insurance)	X (no financing of any credit life, credit disability, credit unemployment, etc.)			X (no financing of any credit life, credit disability, credit unemployment, or any other life or health insurance)			

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					Section 10b of the Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance													
Limit Broker Fees and/or Total Charges	X						X (only requiring disclosure no later than three days prior to closing)											X (no home loans financing credit life, credit disability, credit unemployment, or any other life or health insurance)
No Charging Fee Where Product or Service Not Actually Provided & No Misrepresenting Amount Charged By or Paid to 3 rd	(Gives 30 day right to cancel with full refund and later right to cancel with refund computed so as to at least = actuarial				X													

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Party for Product or Service	method; also, can not sell without separate notice it's not required purchase and right to cancel)																	
No Fees & Points for Interest Rate Reduction Not Reasonably Consistent with Industry “Customs & Practices” or Otherwise Made in Bad Faith or Unconscionable		X			X (fees & points cannot be “unconscionable in total amount” - defined in Title I as “oppressive or unreasonably harsh or manifestly unfair, considering all circumstances.”)													
No Late Fees for Late Payments							X (unless late fees <= 5% of the past due installment; fee cannot be charged				X (unless late fees <= 5% of the past due installment; fee cannot be charged			X (unless late fees <= 5% of the past due installment; fee cannot be charged				

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							more than once as a result of a single late payment; and late fees agreed to by borrower as per contract)				more than once as a result of a single late payment; and late fees agreed to by borrower as per contract)			more than once as a result of a single late payment; and late fees agreed to by borrower as per contract)			
No Fee For Balance																	
Additional Disclosures					X – disclosure notice in the form promulgated by the Mayor – to be published by the Mayor in the DC Register												
Exact Monthly payments: mortgage insurance, real estate taxes, hazard insurance, principal/interest/mortgage																	

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insurance.																	
Debt Consolidation Loans - Notice At or Prior to Application that Aggregate Amount & Number of Payments May Increase		X (the following must be disclosed: notice that “you are not required to complete this agreement merely because you have received these disclosures or have signed a loan application” ; APR; amount of regular monthly of period payments.															
Notice at Application that Loan Not Necessarily Least Expensive &		X (any variable-rate transaction)					X (notice must be similar to the language of the notice										

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Should Shop Around							provided in the bill)										
Translate Certain Loan Documents into Language Other Than English (if another language used during discussions)																	
Notice At or Before Application Whether Loan Will Be Sold & If So, To Whom (or Can Not Sell loan for 180 Days)																	
Additional Notices When Foreclosing																	
Notice That In Business of Arranging Loans for Fees, What Fee Will Be Charged and How Calculated +																	X (if loan delinquent by more than 30 days, notice suggesting counseling required – suggested

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Borrower Should Receive His Credit Report																		language provided in the Act; additional requirement about when to institute action)
Other Provisions										No funds administered by the City of Georgia may be used in combination with any HCL or predatory loan.	No funds administered by the City of Georgia may be used in combination with any HCL or predatory loan.							
Home Improvement Contract Proceeds Must Be Payable Jointly to Borrower & Contractor, or at Borrower's Option to agreed upon 3 rd Party Escrow Agent							X (unless the lender is presented with a completion contract signed by all parties)			X (provided that in no instance shall more than 25% of the total proceeds of the threshold or high cost loan be disbursed at the time of closing) (this provision is not	X (does not apply to a state chartered bank, a bank and trust company, a savings bank, a private bank or a national bank, a State or federally chartered savings and			X (and the lender must be presented with a signed and dated completion certificate showing that the home improvements have been completed)				

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										applicable to certain banks but is applicable to their affiliates)	loan association or credit union; it does apply to affiliates)						
Various Other Restrictions on Home Improvement Lending / Contracting		X								X (home improvement contractor must furnish notice as published by the Department of Planning and Neighborhood Conservation)	X (home improvement contractor must furnish notice as published by the Department of Planning and Neighborhood Conservation)						X
Required Reporting to Credit Bureaus					X (favorable payment history must be reported within 6 months)												
Additional Governmental Reporting Requirements	X (new Homeowners' Equity Recovery Act , HERA, provisions	X								X (at the time or recording a mortgage, a certificate of compliance	X (at the time or recording a mortgage, a certificate of compliance			X (various info about the bank's lending activity must be reported			

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	that give both strong notice & new borrower’s right to sell during 90-day period and recovery remaining equity after paying debt.)									(should be similar to the language provided in the ordinance) must be submitted to the Business License Department)	(should be similar to the language provided in the ordinance) must be submitted to the Business License Department)			to the Director of Finance; certificate that the bank is not a HC or predatory lender is required before the bank can be designated as a DeKalb County depository or is awarded a contract with DeKalb County)				
Broker Deemed to be Lender’s Agent																		X (banks must report default and foreclosure data on conventional loans to Commissioner)
Lender May Not Make Investments Backed By Loans That Violate	X																	

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Statute																			
Enforcement & Liability																			
Violations Deemed Unfair & Deceptive Acts & Practices	X				X (if violation caused by borrower providing incorrect info to lender, lender is not liable so long as he verified borrower's current and expected income and debts)													Commissioner can impose certain remedial requirements or fines if default and foreclosure rate exceeds the average.	
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)							X (notice about liability required)												
Special Affirmative Pleading Requirements for Lenders & Various Affirmative Defenses for		X (disclosure to subsequent purchasers about possible liability)																	

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Borrowers		required)															
Any Payments Collected in Excess of the Statutorily Permitted Amounts Must Be Refunded to Borrower																	
Substantial Monetary Penalties		X			X (punitive damages cannot exceed 600% of actual damages; injunctive relief; attorneys’ fees; damages pursuant to DC law, etc)					X (fines of not less than \$100 and not more than \$300 PER DAY) Also, loss of city contracts, loss of business privilege license, and forfeiture of government-funded housing assistance.	X (fines of not less than \$100 and not more than \$300 PER DAY) Also, loss of city contracts, loss of business privilege license, and forfeiture of government-funded housing assistance.						
Limited Right to Cure, etc.					X (no violation if appropriate restitution within 120 days of the home loan		X (no violation if appropriate restitution within 60 days after discovering			X (no violation if appropriate restitution within 30 days of the loan closing	X (no violation if appropriate restitution within 30 days of the loan closing						

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					initial funding; if disclosure notice complied with and violation not a pattern of practice)		the error and prior to commencement of any legal action)			and prior to commencement of any legal action, or loan changed from HCL to non-HCL; if failure to comply was not intentional, all of the above applies, except notification can be within 60 days) (this provision is not applicable to activities of certain financial institutions)	and prior to commencement of any legal action, or loan changed from HCL to non-HCL; if failure to comply was not intentional, all of the above applies, except notification can be within 60 days)							
If Violation Found, Foreclosure Prohibited, Except by Judicial Order					X													

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL "PREDATORY LENDING" LEGISLATION – Part 2

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ⁱ Note that this chart is designed to give the reader a general comparison of the major concepts in key bills. Not every concept in every bill is highlighted, and the descriptions contained herein may be simplified and not necessarily complete or fully precise. The reader should use this document only as a rough guide and should carefully read the details of each bill. All bills covered herein can be found on the NHEMA website (<http://www.nhema.org>). Also, other pending state bills or regulations exist that may be of interest.

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