

BUTERA & ANDREWS

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 3

09/19/02 Version

CONCEPT¹	NHEMA Staff Draft Concepts	Illinois HB 2146	Illinois HB 2439/ Public Act 92-0428	Illinois HB 3104	Illinois SR 106	Illinois – Cook County Ordinance 240684	Indiana HB 1144	Iowa HB 367	Iowa HCR 21 / SCR 17	Louisiana HB 1766	Louisiana HB 2042	Louisiana HB 1436	Maine HB 1396	Maryland HB 1056	Maryland HB 885	Massachusetts SB 18
Date of Introduction (i), Current Status, or Date of Enactment (e)		02/21/01(i) dead	02/23/01(i) 08/23/01 (Governor approved as Public Act 92-0428)	02/28/01(i) dead	04/05/01(i) dead	01/04/01(i) 04/17/01(e)	01/09/01(i) dead	02/22/01(i) dead	HCR 21: 03/08/01(i) dead SCR 17: 03/13/01(i) dead	03/26/01(i) dead	04/25/01(i) dead	03/26/01(i) 06/22/01 (signed by Governor)	12/07/01 (filed as LR 3022) 03/07/02 (signed by Governor)	02/09/01(i) dead	02/09/01(i) dead	01/03/01(i) pending
Summary of Bills Only Related to Predatory Lending		Establishing a special fund in the State Treasury and providing for the State Treasurer to use the fund to provide collateral for Illinois citizens who need additional collateral in order to obtain a home loan or avoid foreclosure.	Amending the Deposit of State Moneys Act; the Act provides that the State Treasurer may accept a reduced rate of interest on deposits of State moneys from a financial institution if the institution agrees to make home loans to Illinois citizens under	Place-holder (provides only a short title: the Consumer Protection Act)	Urging the Department of Financial Institutions and OBRE to delay implementation of the rules regarding the high - risk home loans and to engage in fact-finding process designed to develop a legislative response to the issue.		Establishing the mortgage fraud unit within the office of the attorney general; the unit will (1) investigate fraud allegations in mortgage lending (2) institute civil actions to remedy results of fraud (3) cooperate with fed. and state agencies in the prosecution of violations re: mortgage	Calls for a further study of predatory lending.	Establishing a committee by the legislative council to conduct a study of predatory or subprime lending practices.		Requiring the office of financial institutions to promulgate rules and regulations regarding public awareness of predatory lending practices.	Providing for licensure restrictions, exemptions, fees, and renewals; lending restrictions; record-keeping; refunds of authorized fees to consumers; disclosure statements; loan brokerage contracts; criminal penalties, related matter.	Amending the laws governing loan brokers, or credit service organization to apply consumer protections to transactions involving brokers who are paid by lenders or other creditors to arrange credit transactions.	Allowing mortgage brokers to charge finder’s fees not in excess of 8%; if another loan is obtained on the same property within 24 months, finder’s fees can be charged only on the amount in excess of initial loan; no fee from loan originator in the same transaction if based on interest rate or points; if such fee accepted,	Prohibiting certain lenders and credit grantors from financing certain single premium credit insurance coverages as part of mortgage loan; providing for certain penalties,	

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			specified conditions and refrain from foreclosing on such citizens failing to make payments as a result of temporary layoff or disability; the Act also allows use of certain interest income on deposits of state moneys to secure specified home loans.				lending.							broker = agent of loan originator.		
Types of Loans Covered by Act						[applies to loans secured by residential real property in the county with a dwelling for not more										

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						than 4 families or a condo unit] DOES NOT APPLY TO LOANS FOR BUS. PURPOSE OR LOANS > \$250,000										
Triggers																
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 10%)	(like HOEPA)					X (APR > T-bill + 6% on first lien mortgage, or + 8% in case of junior mortgage)				X (APR > T-bill + 5%, of if variable, reasonably expected to exceed this, or rate changes not per standard market index)						X (APR > T-bill + 5%, or if variable, reasonably expected to exceed this, or rate changes not per standard market index)
Points and Fees (HOEPA = points & fees > greater of 8% of total loan amount or \$400)	(like HOEPA)					X (points & fees > 5% of total loan amount if loan => \$16,000; or p&f > \$800 if loan < \$16,000)				X (points & fees > 3% of total loan amount if at least \$20,000; 4% if it is purchase \$ guaranteed by FHA/VA)						X (points & fees > 3% of total loan amount if it is at least \$20,000, or 4% of it is purchase \$ guaranteed by FHA/VA)

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										& >\$20,000; or the lesser of 5% or \$800 if total < \$20,000)						& > \$20,000, or lesser of 5% or \$800 if it's < \$20,000) (excluding certain bona fide discount points)
Other Triggers																
Restrictions on Loan Terms																
No Negative Amortization	X					X				X (any home loan)						
No Negative Equity																
No Balloons (seasonal/irregular income adjustments typically OK)	X					X (except bridge loans and loans with a term of not less than 180 months but balloon must be disclosed; and except for home equity loans)				X (only if it is more than twice as large as the average of earlier scheduled payments)						X (only if is more than twice as large as average of earlier scheduled payments)
No Call Provision (Debt Acceleration)	X									X (except when repayment accelerated)						X (except when repayment accelerated)

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										by default)						by default)
No Advance Payments	X									X (if only two period payments consolidated – OK)						X (if only two period payments consolidated – OK)
No Modification or Deferral Fees	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 > 6 mo. advance interest on amount prepaid in excess of 20% of original balance)					X (no prepayment penalty after expiration of 36-month period following the loan date; no penalty > 3% of total loan amount if within one year; no penalty > 2% during 2 nd year; or 1% during third year)				X (any home loan)						
No Increased Interest Rate After Default	X									X						X
No Mandatory Arbitration Limiting Judicial Relief	X (clause must require proceeding to be in									X						X

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	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															
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan										X (or by dividing any loan transaction into separate parts)						X (or by dividing any loan transaction into separate payments)
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																

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Recognized Lending Rate																
Borrower Cannot Be Required to Provide 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 (certification about counseling provided must be obtained from a counselor approved by L. housing finance agency)						X (borrower must complete accredited credit counseling program – standard accreditation to be established by the Commissioner)
No Lending Without Consumer’s Own Attorney																

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No Loan “Flipping”	X (handled by limiting financing of points/fees on refinancing within 12 mo.)					X										
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor										X (any home loan)						
No Lending Without Due Regard for Repayment Ability (HOEPA applies only in “pattern & practice” cases)	X (Presumption can repay if monthly payments do not exceed 55% of gross monthly income; no presumption of inability solely by exceeding 55%)					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 considered)				X (any home loan)						

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No Recommending or Encouraging Default on Existing Loan																
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value																
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation																
No Lending if loan + other liens exceed 80% of Property Value																
No Lending Without Borrower Being Able To Seek Independent Review of the Loan Terms																
No “Packing” – Selling																

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Unrelated Products in Conjunction with HCL Without Borrower’s Informed Consent																
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 (prohibits only financing of point & fees > 6% of total loan amount; does not mention 3 rd party)										
No Points & Fees if HCL Refinances Lender’s or																

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Affiliate’s HCL																
No Financing of Credit Insurance (except monthly premium)						X (no home loans financing credit life, credit disability, credit unemployment, or any other life or health insurance) (unless details and termination policy disclosed at least 3 business days before signing agreement)										
Limit Broker Fees and/or Total Charges	X															
No Charging Fee Where Product or Service Not Actually Provided & No Misrepresenting Amount	(Gives 30 day right to cancel with full refund and later right to cancel with refund computed so as															

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Charged By or Paid to 3 rd Party for Product or Service	to at least = actuarial 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																
No Late Fees for Late Payments																
No Fee For Balance																
Additional Disclosures																
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard																

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Insurance, Principal/Interest/Mortgage Insurance.																
Debt Consolidation Loans - Notice At or Prior to Application that Aggregate Amount & Number of Payments May Increase																
Notice at Application that Loan Not Necessarily Least Expensive & Should Shop Around																
Translate Certain Loan Documents into Language Other Than English (if another language used during discussions)																
Notice At or Before Application Whether Loan																

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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 + Borrower Should Receive His Credit Report																
Other Provisions																
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				X						X
Various Other						X (no										

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Restrictions on Home Improvement Lending / Contracting						payment from loan proceeds to contractor who has been found (at least twice within the last 24 months) in violation of laws prohibiting deceptive practices)										
Required Reporting to Credit Bureaus																
Additional Governmental Reporting Requirements	X (new Homeowners’ Equity Recovery Act , HERA, provisions that give both strong notice & new borrower’s right to sell															X (Required annual reports to the Commissioner concerning business and operations as specified by the Commissioner) The Bill

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 3

09/19/02 Version

CONCEPT ¹	NHEMA Staff Draft Concepts	Illinois HB 2146	Illinois HB 2439/ Public Act 92-0428	Illinois HB 3104	Illinois SR 106	Illinois – Cook County Ordinance 240684	Indiana HB 1144	Iowa HB 367	Iowa HCR 21 / SCR 17	Louisiana HB 1766	Louisiana HB 2042	Louisiana HB 1436	Maine HB 1396	Maryland HB 1056	Maryland HB 885	Massachusetts SB 18	
	during 90-day period and recovery remaining equity after paying debt.)																provides for penalty of \$50 per day.
Broker Deemed to be Lender’s Agent																	
Lender May Not Make Investments Backed By Loans That Violate Statute	X																
Enforcement & Liability																	
Violations Deemed Unfair & Deceptive Acts & Practices	X																
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)																	
Special Affirmative Pleading Requirements for Lenders &																	

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Various Affirmative Defenses for Borrowers																
Any Payments Collected in Excess of the Statutorily Permitted Amounts Must Be Refunded to Borrower										X (any payments collected in excess is subject to forfeiture)						
Substantial Monetary Penalties																X (forfeiture of all principal and interest)
Limited Right to Cure, etc.										X (no violation if appropriate restitution within 30 days of the loan closing and prior to commencement of any legal action, or loan changed from HCL to non-HCL; if failure to comply was not						X (no violation if appropriate restitution within 30 days of the loan closing and prior to institution of any action; in case of bona fide error, appropriate restitution must be made within 60 days after discovery of

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										intentional, all of the above applies, except notification can be within 60 days)						compliance failure and prior to action)
If Violation Found, Foreclosure Prohibited, Except by Judicial Order																

¹ 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.