

Butera & Andrews

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 4

11/14/02 Version

CONCEPT¹	NHEMA Staff Draft Concepts	Massachusetts HB 2830	Massachusetts HB 1144/209 CMR 40.00 et seq.	Massachusetts HB 3035	Massachusetts SB 1923	Michigan HB 5424 / SB 708	Michigan SB 773	Michigan – more than 20 bills relating to predatory lending	Michigan – Substitute to SB 708	Minnesota HB 2213 / SB 2348	Minnesota HB 1066	Missouri HB 181/ SB 786	Missouri HB 96	Nebraska LB 459	Nebraska LR 126
Date of Introduction (i), Current Status, or Date of Enactment (e)		01/03/01(i) pending	01/03/01(i) 06/25/01(e)	01/03/01(i) pending	06/28/01(i) pending	HB 5424: 11/01/01(i) pending SB 708: 10/16/01(i) pending	10/23/01(i) pending	HB5076 HB5424 HB5425 HB5426 HB5427 HB5428 HB5429 HB5430 HB5553 HB6121 HB6122 HB6123 HB6124 HB6125 HB6126 HB6127 SB708 SB709 SB710 SB711 SB712 SB713 SB714 SB768 SB769 SB770 SB771 SB772 SB774	11/12/02 (Substitute Bill passed at the Senate Banking Committee)	HB 2213: 03/26/01(i) dead SB2348: 04/25/01(i) dead	02/22/01(i) dead	12/19/01(i) dead	01/03/01(i) dead	01/10/01(i) dead	05/09/01(i) dead
Summary of Bills Only Related to Predatory		Protecting senior citizens from certain lending			Authorizing the Joint Committee on Banks and						Regulating certain real property loans, prohibiting		Creating the Unfair Home Improvement	Changing provisions relating to the	Requiring the Banking, Commerce and

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Lending		practices			Banking to sit during the recess of the General Court for the purpose of making an investigation and study of certain current Senate and House documents relating to banking matters.						prepayment penalties, requiring interest on escrow accounts, regulating private mortgage insurance and lending practices.		t Loans Act and revising bonding requirements for mortgage brokers.	Mortgage Bankers Registration and Licensing Act.	Insurance Committee to conduct an interim study whether Nebraska should enact new statutory restrictions on predatory lending activities.
Types of Loans Covered by Act			[includes secured open-end lines of credit but not unsecured ones nor reverse mortgages]	[includes open-end lines of credit but not reverse mortgages]											
Triggers															
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 10%)	(like HOEPA)		X (APR > T-bill + 8% for first mortgage or 9% for junior mortgage)	X (APR > T-bill + 8% for first mortgage or 9% for junior mortgage)		X (APR > T-bill + 6.5%)	X (APR > T-bill + 6.5%)		X (APR > T-bill + 8% for first lien, or +10% for subordinate lien)	X (APR > T-bill + 6.5% , or if variable, reasonably expected to exceed this, or rate changes not per		X (APR > T-bill + 5% , or if variable, reasonably expected to exceed this, or rate			

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										standard market index)		changes not per standard market index)			
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$400)	(like HOEPA)		X (points & fees > greater of 5% of total loan amount of \$400 (adjusted annually) (certain bona fide discount points may be excluded)	X (points & fees > 5%; bona fide discount points may be excluded)		X (points & fees > 4% of the total loan amount)	X (points & fees > 3% of the total loan amount if loans => \$20,000 or the lesser of 5% of the total loan amount or \$800 if loan <\$20,000) (definition of p&f is extended to include, among others, costs of certain insurance premiums finances by lender, all prepayment fees or penalties charged the borrower if the loan is refinanced by a lender or his		X (points & fees > greater of 8% of total loan amount or \$400 (to be adjusted annually))	X (point & fees > greater of 5% of total loan amount or \$800) (certain bona fide discount point may be excluded)		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 & > \$20,000, or lesser of 5% or \$800 if it's < \$20,000) (include broker fees; can exclude certain bona fide discount points)			

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							affiliate; p&f do not include taxes, filing fees, recording, fees paid to other person than a lender or his affiliate; certain discount points are also excluded)								
Other Triggers															
Restrictions on Loan Terms															
No Negative Amortization	X		X	X (OK if consequence of temporary forbearance sought by borrower)		X	X		X			X			
No Negative Equity															
No Balloons (seasonal/irregular income adjustments typically OK)	X		X (except over 7 yrs. & purchase \$ bridge loans)	X (only if it is more than twice as large; except over 7 yrs & purchase \$ bridge loans)		X (only if it is more than twice as large)	X (only if it is more than twice as large)		X (applies to loans with term < 5 years; does not apply to bridge loans with maturity < 1 year connected)			X (only if it is more than twice as large)			

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									with acquisition of principal dwelling)						
No Call Provision (Debt Acceleration)	X		X (if rebates of interest arise from loan acceleration due to default, refund must be calculated by actuarial method or method more favorable)	X (except when repayment accelerated by default)		X (except when repayment accelerated by default)	X (except when repayment accelerated by default)		X (except when repayment accelerated by fraud or material misrepresentation by borrower, his failure to meet repayment terms of agreement for outstanding balance, and his action or inaction that adversely affect creditor's security)	X (except when repayment accelerated by default)		X (except when repayment accelerated by default)			
No Advance Payments	X		X (if only two period payments consolidated – OK)	X (if only two period payments consolidated – OK)		X (if only two period payments consolidated – OK)	X (if only two period payments consolidated – OK)		X (if only two period payments consolidated – OK)			X (if only two period payments consolidated – OK)			
No Modification or Deferral Fees	X		X (unless the loan is no	X (unless the loan is nor		X	X					X			

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			longer HCL and APR was decreased by at least 2%)	longer HCL and APR was decreased by at least 2%)											
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 (prepayment penalty permitted if: (1) during first 3 years, (2) prepayment funds not refinanced by lender, and (3) total monthly debts <= 50% of monthly gross income)	X (any loan; amount borrowed is \$300,000 or less; borrower is natural person; debt is incurred for persona/family /household purposes; loan is secured by first mortgage) (Provision does not apply if preempted by fed. law)		X (NO PP FOR HCL) (limitations on pp for any home loan: no penalty after the first 3 years; penalty cannot > 3% of prepaid balance within one year; no > 2% between one and two years; no > 1% between two and three years) (Penalty cannot extend beyond introductory period)	X (no PP for any home loan)		X (PP OK during the first 5 years following the consummation , source of prepayment funds may not be refinancing by creditor or his affiliate, at consummation , borrower’s total monthly debts do not exceed 50% of borrower’s gross income)	X (no penalty after the first 3 years; penalty cannot > 3% of prepaid balance within one year; no > 2% between one and two years; no > 1% between two and three years) (Penalty cannot extend beyond introductory period)		X			
No Increased Interest Rate After Default	X		X	X		X	X		X	X		X			
No Mandatory Arbitration Limiting Judicial	X (clause must require proceeding to		X (No “oppressive” mandatory	X (no “oppressive, unfair,		X	X			X		X			

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Relief	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		arbitration clause or waiver of participation in class action lawsuits)	unconscionable, or substantially in derogation on rights of consumer”) (Clauses that comply with the Statement of Principles of the National Consumer Dispute Advisory Committee are presumed valid) This provision can be preempted by federal law.											
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan										X (specifically prohibits only dividing any loan transaction into separate payments)		X (or by dividing any loan transaction into separate payments)			
No Enforcement if HCL Contract Leaves Blanks to be Filled In						X (any home loan)	X (any home loan)		X	X (any home loan)		X			
No Waiver of a															

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Violation of Predatory Lending Bill															
Adjustable Rate Mortgages Must Be Tied to Nationally Recognized Lending Rate				X											
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		X (lender must give notice, saying should consider counseling, & give state-approved list of counselors) (creditor must			X (clear written and oral disclosure regarding the value of the receiving housing counseling and a list of HUD-	X		X (lender must give cautionary notice, as specified in the act, saying should consider counseling, &	X (counseling must be performed by a non-profit organization that meets specific criteria)		X (certificate showing borrower received counseling must be obtained from			

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	counselors)		have evidence that borrower underwent counseling or a written waiver)			approved counselors must be provided to the borrower at least 3 days before closing)			give state-approved list of counselors, lender must provide borrower with the document titled “borrower’s bill of rights” and a video)			approved counselor)			
No Lending Without Consumer’s Own Attorney															
No Loan “Flipping”												X (any loan)			
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor						X	X			X					
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 (Presumption of ability to repay if monthly payments do not exceed 50% of gross	X (Presumption of ability to repay if monthly payments do not exceed 50% of gross		X (Presumption of ability to repay if monthly payments do not exceed 50% of gross	X (Presumption of ability to repay if monthly payments do not exceed 50% of gross					X			

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			monthly income) (if income >120% of median family income, ability to repay does not have to be considered)	monthly income) (if income >120% of median family income, ability to repay does not have to be considered) Lender must keep record of determination of repayment ability.		monthly income) (no presumption of inability solely because monthly payments > 50% of his monthly gross income)	monthly income) (no presumption of inability solely because monthly payments > 50% of his monthly gross income)								
No Recommending or Encouraging Default on Existing Loan			X			X (any home loan)	X (any home loan)					X (any loan)			
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value	X (Presumption can repay if monthly payments do not exceed 55% of gross monthly income; no presumption of inability solely by exceeding 55%)					X (any home loan)	X (any home loan)		X			X (any loan)			

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No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation			X (no advertising of refinancing without disclosing that HCL will increase # on monthly payments and aggregate amount to be repaid)			X (any home loan)	X (any home loan)		X			X (in connection with a “residential loan transaction”)				
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 Unrelated Products in Conjunction with HCL Without Borrower’s			X (unless disclosed to borrower orally and in writing at least 3 days prior to closing)													

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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 points and fees >5% of principal amount of closed end loan, or of maximum line of credit for open end loan)	X (lender may not charge p&f > 5% of loan amount; bona fide loan discount points excluded) (does not mention 3 rd parties)		X (no financing of points and fees > 3% of the loan amount of \$600, whichever is less)	X			X (prohibits financing of points and fees > 3% of the loan amount of \$600, whichever is less).					
No Points & Fees if HCL Refinances Lender’s or Affiliate’s HCL			X (refinancing not within last 2 year and p&f cannot exceed 5% of additional proceeds	X (refinancing not within last 2 years, except as to additional proceeds over & above the		X (refinancing prohibited for any HCL) (any home loan: refinancing allowed but prepayment				X (points & fees cannot > 3% ; must be calculated with reference only to any new money					

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			received by borrower in connection with refinancing other than appraisal fees, credit report fees, fire, property, disability insurance, etc – these cannot be financed by creditor if monthly payments of obligor >50% of m. gross income)	amount of the existing HCL, provided p&f must reflect lender’s typical p&f structure; broker cannot be involved)		penalty prohibited in connection with this kind of refinancing)				loaned)					
No Financing of Credit Insurance (except monthly premium)			X (no loan which contains single-premium credit insurance, credit life, debt cancellation, and debt suspension)			X(any home loan) (NO ADVANCE COLLECTIO N of certain credit insurance including debt cancellation or suspension agreement)	X(any home loan) (NO FINANCING and NO ADVANCE COLLECTIO N of certain credit insurance including debt cancellation or suspension agreement)		X	X		X (any loan)			

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Limit Broker Fees and/or Total Charges	X														
No Charging Fee Where Product or Service Not Actually Provided & No Misrepresenting Amount Charged By or Paid to 3 rd Party for Product or Service	(Gives 30 day right to cancel with full refund and later right to cancel with refund computed so as to at least = actuarial method; also, can not sell without separate notice it's not required purchase and right to cancel)		X (includes services not actually performed; services for which the fees bear no reasonable relationship to value of services; fees are other wise unconscionable)			X (any home loan)	X (any home loan)		X			X (any loan)			
No Fees & Points for Interest Rate Reduction Not Reasonably Consistent with Industry “Customs & Practices” or Otherwise Made in Bad Faith or Unconscionable			X												

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No Late Fees for Late Payments							X (any home loan) (fee may not > 5% of the amount due and the fee is not assessed more than once for any single installment)										
No Fee For Balance							X (any home loan)										
Additional Disclosures																	
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard Insurance, Principal/Interest /Mortgage Insurance.			X (“regular monthly (or other period) payments” not specified) Also required to disclose APR or variable rate.			X (whether the loan contains pp, amount of monthly payments, whether the loan has a variable rate feature, loan fees, info about any payment made to third party creditors)	X (whether the loan contains pp, amount of monthly payments, whether the loan has a variable rate feature, loan fees, info about any payment made to third party creditors)										
Debt Consolidation Loans - Notice At or Prior to																	

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Application that Aggregate Amount & Number of Payments May Increase															
Notice at Application that Loan Not Necessarily Least Expensive & Should Shop Around			X (also requiring lender to inform borrower that no duty to complete agreement, possibility of losing one’s home, possibility of aggregate amount of loan or number of payments increasing despite aggregate monthly debt payments decreasing)												
Translate Certain Loan Documents into Language Other Than English (if						X (any home loan)	X (any home loan)			X (any home loan)		X (any loan)			

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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 + Borrower Should Receive His Credit Report															
Other Provisions															
Home Improvement Contract Proceeds Must			X	X		X	X (lender must be presented with a completion		X	X		X			

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Be Payable Jointly to Borrower & Contractor, or at Borrower’s Option to agree upon 3 rd Party Escrow Agent							certificate)								
Various Other Restrictions on Home Improvement Lending / Contracting															
Required Reporting to Credit Bureaus			X (to report annually both favorable and unfavorable payment histories)												
Additional Governmental Reporting Requirements	X (new Homeowners’ Equity Recovery Act, HERA, provisions that give both strong notice & new borrower’s			X (annual report of # and rate of defaults and foreclosures relating to HCL)						X (lenders exempt from reporting pursuant to 12 U.S.C. 2803 must report to the Commissioner of Commerce just like other		X (lenders exempt from reporting pursuant to 12 U.S.C. 2803 must report to the Director of the Division of Finance			

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	right to sell during 90-day period and recovery remaining equity after paying debt.)									lenders) (Average and median interest rates must be reported)		just like other lenders) (Average and median interest rates must be reported)			
Broker Deemed to be Lender’s Agent															
Lender May Not Make Investments Backed By Loans That Violate Statute	X											X			
Enforcement & Liability															
Violations Deemed Unfair & Deceptive Acts & Practices	X														
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)			X (notice to assignee or purchaser that loan is subject to TILA required)			X (lender may not assign HCL without informing assignee or purchaser about liability)	X (lender may not assign HCL without informing assignee or purchaser about liability)			X					
Special															

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Affirmative Pleading Requirements for Lenders & Various Affirmative Defenses for Borrowers															
Any Payments Collected in Excess of the Statutorily Permitted Amounts Must Be Refunded to Borrower															
Substantial Monetary Penalties						X (violation of this act is a misdemeanor punishable by imprisonment for no more than 1 year or a fine of not more than \$10,000 or both)	X (civil penalty: actual damages (including consequential and incidental), damages equal to finance charges plus 10% of the amount financed, costs and attorney fees; violation of this act is a misdemeanor		X (commissioner may obtain declaratory judgment, enjoin person engaging in violation of this law, obtain civil fine of not more than \$10,000 for first offense and \$20,000 for second and subsequent	X (injured borrower may recover all interest, points and fees reserved, twice the amount of interest paid, costs and disbursements, etc.; borrower may rescind the loan subject to ct. determination, or ask for declaratory		X (forfeiture of all principal and interest)			

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							punishable by imprisonment for no more than 1 year or a fine of not more than \$10,000 or both)		offense; order restitution)	judgment applying all payments made to principal reduction)					
Limited Right to Cure, etc.			X (no violation if bona fide errors shown by a preponderance of the evidence)			X (no violation if appropriate restitution and correction 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 compliance failure and prior to action)			X (no violation if appropriate restitution within 60 days of discovery or error and prior to institution of any action; no violation if bona fide error notwithstanding maintenance of procedures reasonably adopted to avoid error)	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 compliance failure and prior to action)		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 compliance failure and prior to action)			
If Violation Found,															

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Foreclosure Prohibited, Except by Judicial Order															

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.