

BUTERA & ANDREWS

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 5

09/19/02 Version

CONCEPT ¹	NHEMA Staff Draft Concepts	New Jersey SB 2187 / AB 3298	NM – Albuquerque Ordinance O-01-6	New York AB 3717 / SB 1818	New York AB 7828 / SB 5005	New York AB 9137 / SB 5635	New York SB 3590	North Carolina Session Law 2001-393	North Carolina HB 1106 / SB 1064	Ohio HB 43	Ohio HB 218	Ohio HB 386	Ohio – Dayton Ordinance 29937-01	Ohio – Dayton Ordinance 29982-01	Ohio – Dayton Ordinance 29990-01	Ohio – Cincinnati Ordinance 2001-03854
Date of Introduction (i), Current Status, or Date of Enactment (e)		SB 2187: 03/08/01(i) dead AB 3298: 03/22/01(i) dead	12/03/01(i) dead	AB 3717: 02/05/01(i) pending SB 1818: 01/30/01(i) pending	AB 7828: 03/27/01(i) pending SB 5005: 04/17/01(i) pending	AB 9137: 06/14/01(i) pending SB 5635: 06/18/01(i) pending	03/15/01(i) pending	SB 904: 04/05/01(i) 08/29/01(e) HB1179: 04/12/01(i) 08/29/01(e)	HB 1106: 04/11/01(i) pending SB 1064: 04/05/01(i) dead	01/31/01(i) pending	04/12/01(i) pending	10/02/01(i) 02/22/02 (e)	02/01(i) dead	06/13/01(i) dead	07/11/01(e); TRO has been granted	09/18/01(i) pending
Summary of Bills Only Related to Predatory Lending				Amending the Banking Law and enacting the Home Equity Fraud Act controlling improper activities by home improvement contractors and finance companies.		Also prohibits the state, its public authorities, and its political subdivisions and districts from participating in business with financial institutions that engage in predatory lending.	Imposing certain requirements with respect to negative amortization provisions in alternative mortgage instruments and removing statutory provisions on graduate payment mortgages instruments.	Amending the laws concerning the licensure of mortgage lenders and brokers.	Establishing the Mortgage Lending Act to regulate mortgage brokers and bankers.			Stating the intent of the General Assembly on the relationship of state and local laws regarding the regulation of loans and other forms of credit.				Emergency ordinance regulating activities of mortgage brokers – prohibits certain acts, such as failure to provide certain disclosures, arranging loan with likelihood of foreclosure, discrimination in brokering, etc.
Types of Loans Covered by Act			Reverse mortgages are excluded											HCL = a loan that is secured by residential real property located within	[applies to loans secured by residential real property in the City of	

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														the City of Dayton on which there is situated a dwelling for not more than 4 families or condo; not loan for business purpose or >\$250,000	Dayton with a dwelling for not more 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 > 90-day standard mandatory delivery commitment for a first mortgage from Fannie Mae or Freddie Mac + 3% on first lien, or + 5% in case of junior lien)		X (APR > T-bill +5% for first lien or 7% for junior lien) (if varied, rate considered is maximum rate permitted)	X (APR > T-bill +5% for first lien or 7% for junior lien) (if varied, rate considered is maximum rate permitted)				(like HOEPA) + if varied, consider rates after initial period.	(like HOEPA) + if varied, consider rates after initial period.		X (APR > T-bill + 4% ; if varied, rate considered is maximum rate permitted)	X (APR > T-bill + 9%)	X (APR > T-bill +9% or current HOEPA trigger, whichever is less)	
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$400)	(like HOEPA)		X (points & fees > 4% of the total loan amount or \$800, whichever is greater) (Definition of p&f includes: compensation paid directly and	X (points & fees > greater of \$500 or 3% of loan for services by broker; p&f > 6% of loan for	X (points & fees > 5% (or 6% if purchase \$) of total loan amount if loan => \$20,000;	X (points & fees > 5% (or 6% if purchase \$) of total loan amount if loan => \$20,000;				X (points & fees > 8% of total loan amount)	X (points & fees > 8% of total loan amount)		X (points & fees > 3% (or 4% if loan => \$20,000 and loan is purchase \$)	X (points & fees > 5% of the total loan amount, or 6% if loan => \$20,000 and loan is purchase \$)	X (points & fees > the lesser or HOEPA p&f trigger or 5% of the total loan amount, or 6% if loan => \$20,000	

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			indirectly to lender, his affiliate, or mortgage broker; all financed credit insurance premiums; and all prepayment fees and penalties)	services related to qualifying for and receiving the loan	the lesser of 6% of total loan amount or \$800 if loan <\$20,000) (certain bona fide discount points excluded)	the lesser of 6% of total loan amount or \$800 if loan <\$20,000) (certain bona fide discount points excluded)										and purchase \$ loan guaranteed by FHA/VA) (Definition of p&f includes: compensation paid directly and indirectly to lender, his affiliate, or mortgage broker; all financed credit insurance premiums (exempted if disclosures made)
Other Triggers										X (if consumer’s total monthly debt payments > 60% of gross income or alternative percentage as determined by the	[new trigger definition: if consumer’s total monthly debt payments > 60% of gross income or alternative percentage					

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										Superintendent)	as determined by the Superintendent)					
Restrictions on Loan Terms													No less favorable terms than obtainable in similar transactions	No less favorable terms than obtainable in similar transactions		
No Negative Amortization	X	(like HOEPA)		X	X	X				X	X		X	X	X	
No Negative Equity		X (points & fees > 5% of total loan amount if loan =/> \$20,000; the lesser of 8% of total loan amount or \$1,000 if loan <\$20,000) (certain bona fide discount points excluded)								X	X					
No Balloons (seasonal/irregul	X		X (only if it is more than twice	X	X (only if it is more	X (only if it is more							X (only if is more than	X (unless borrower is	X (unless a written	

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ar income adjustments typically OK)			as large as the average of earlier scheduled payments)		than twice as large as the average of earlier scheduled payments)	than twice as large as the average of earlier scheduled payments)							twice as large as the average of earlier scheduled payments)	informed about balloon payments and agrees to them)	disclosure is provided to the borrower at least 3 days before closing)	
No Call Provision (Debt Acceleration)	X		X (except when repayment accelerated by default)		X (except when loan accelerated due to failure to abide by material terms of loan)	X (except when loan accelerated due to failure to abide by material terms of loan)							X (except when repayment accelerated by default)			
No Advance Payments	X	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)	X (if only two period payments consolidated – OK)	X (if only two period payments consolidated – OK)	
No Modification or Deferral Fees	X		X		X	X							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	X (only if is more than twice as large as average of earlier scheduled payments)	X		X	X				X (if full principal paid off within 90 days of origination, penalty of one month’s interest can be imposed)	X (if full principal paid off within 90 days of origination, penalty of one month’s interest can be imposed)			X (if within the first 60 months –OK)	X (OK if within the first 60 months)	

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	balance)															
No Increased Interest Rate After Default	X	X (except when repayment accelerated by default)	X	X	X	X							X	X	X	
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 (if only two period payments consolidated – OK)			X	X							X	X	x	
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan		X			X (no bad faith avoidance by any subterfuge, including but not limited to splitting or	X (no bad faith avoidance by any subterfuge, including but not limited to splitting or							X (or by dividing transaction into separate parts)	X (or by dividing transaction into separate parts)	X (no bad faith attempt to avoid the application of this ordinance by dividing any loan transaction into separate	

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					dividing ay loan transaction into separate part)	dividing ay loan transaction into separate part)										parts or any other subterfuge)
No Enforcement if HCL Contract Leaves Blanks to be Filled In																
No Waiver of a Violation of Predatory Lending Bill		X	X (waiver is against public policy and unenforceable)													
Adjustable Rate Mortgages Must Be Tied to Nationally Recognized Lending Rate																
Borrower Cannot Be Required to Provide Property Insurance on Improvements If Insurance Exceeds Their Reasonable Replacement Value																
Limitation on Sales &																

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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 (certificate that borrower received counseling required)		X (certificate that borrower received counseling required)	X (certificate that borrower received counseling required)										
No Lending Without Consumer’s Own Attorney				X (requires only notice that applicant can designate 3 rd party to receive all written communication)												
No Loan “Flipping”					X (defined as refinancing existing home loan where 1) >75 % of prior debt bears lower APR, 2) it will take >	X (defined as refinancing existing home loan where 1) >75 % of prior debt bears lower APR, 2) it will take >								X	X	

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					5 yrs. to recoup costs, 3) existing home mortgage is subsidized by govnt)	5 yrs. to recoup costs, 3) existing home mortgage is subsidized by govnt)										
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor			X (benefit presumed if: net reduction in monthly payments; reduction in interest rate and p&f will be recouped within 5 years; borrower receives cash proceeds when p&f charges is at least the greater of 15% of the new loan or \$12,000 or p&f are limited to 4% of the new money financed; or new loan is necessary to prevent default) Also, no refinancing special mortgages										X (no HCL where costs substantially outweigh benefits obtained + no unfavorable terms b/c disability, illiteracy, inability to understand, etc.)	X (no unfavorable terms b/c inability to protect his interests because of his physical or mental infirmities, or illiteracy)		

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			(originated, subsidized, guaranteed by Govn’t or NGO and interest rate is 2% below market rate or loan has one or more nonstandard payment terms beneficial to borrower.													
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 (certificate that borrower received counseling required)	X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income, provided that borrower has sufficient residual income to pay essential monthly expenses)	X (if no ability to repay -> affirmative defense in foreclosure proceedings if loan received)	X (Presumption on can repay if monthly payments do not exceed 50% of gross monthly income)	X (Presumption on can repay if monthly payments do not exceed 50% of gross monthly income) Also, no lending without due regard to the suitability of the loan for the borrower.							X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income) (no presumption solely b/c > 50%) + No HCL if payments were to increase over ability to pay, income was likely to decrease, of living expenses were	X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income and the borrower has sufficient “residual income” as defined in the guidelines established in 38 CFR 36.4337(e) and VA from 26-2393)	X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income)	

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													likely to increase			
No Recommending or Encouraging Default on Existing Loan		X			X	X										
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	X	X (no procurement of an unreasonably overstated appraisal)	
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation			X (no fraudulent or deceptive acts or practices, including fraudulent or deceptive marketing and sales efforts to sell HCL)										X	X	X (fraudulent or deceptive acts or practices prohibited, such as substantially unfavorable loans terms, current costs exceeding costs in similar	

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																transactions by 20%)
No Lending if loan + other liens exceed 80% of Property Value		X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income)														
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 Informed Consent																
Lender Can Charge or Receive Money,																

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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 (no financing of p&f in excess of 4% of the total loan or \$800, whichever is greater)		X	X							X	X		
No Points & Fees if HCL Refinances Lender’s or Affiliate’s HCL		X (packing not prohibited explicitly but lender may collect money for bona fide loan-related goods)		X (unless refinancing results in rate reduction in amount exceeding refinancing costs)	X	X				X	X		X		X	
No Financing of Credit Insurance (except monthly premium)		X (Borrower may sell, transfer, of convey any property other than	X (any home loan)		X (credit life, credit disability, credit unemployment, debt cancellatio	X (credit life, credit disability, credit unemployment, debt cancellatio								X (credit life, credit disability, credit unemployment, or nay other life or health	X (no financing of any credit life, credit disability, credit unemployment	

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		security or collateral)			n, debt suspension, etc.)	n, debt suspension, etc.)								insurance, unless a separate oral and written disclosure to the borrower is made 3 days before signing the loan)	t, or any other life or health insurance unless separate oral and written disclosures at least 3 days before closing)	
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			X (and payments must be reasonably related to value of goods provided)	X (and payments must be reasonably related to value of goods provided)							X (requires only that payments must be reasonably related to value of goods provided)			
No Fees & Points for Interest Rate		X														

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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 Insurance, Principal/Interest/Mortgage Insurance.		X								X – notice must be given at least 3 days prior to execution (APR, gross monthly cash income, monthly payments, if variable rate => notice they could increase)	X – notice must be given at least 3 days prior to execution (APR, gross monthly cash income, monthly payments, if variable rate => notice they could increase)					

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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										X (only requiring lender to inform borrower that no duty to complete agreement, possibility of losing one’s home)	X (only requiring lender to inform borrower that no duty to complete agreement, possibility of losing one’s home)					
Translate Certain Loan Documents into Language Other Than English (if another language used during discussions)																
Notice At or Before Application				X (or cannot sell loan until												

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Whether Loan Will Be Sold & If So, To Whom (or Can Not Sell Loan for 180 Days)				30 days after disclosure)												
Additional Notices When Foreclosing				X												
Notice That In Business of Arranging Loans for Fees, What Fee Will Be Charged and How Calculated + Borrower Should Receive His Credit Report													X			
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			X		X	X							X	X	X	

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Agent																
Various Other Restrictions on Home Improvement Lending / Contracting				X (provides for revocation, or cancellation of contract within 15 days after signing agreement and imposes certain responsibilities on contractors)												
Required Reporting to Credit Bureaus																
Additional Governmental Reporting Requirements	X (new Homeowners’ Equity Recovery Act, HERA, provisions that give both strong notice															

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& new borrower’s right to sell during 90-day period and recovery remaining equity after paying debt.)																
Broker Deemed to be Lender’s Agent		X		X												
Lender May Not Make Investments Backed By Loans That Violate Statute	X															
Enforcement & Liability																
Violations Deemed Unfair & Deceptive Acts & Practices	X												X	X		
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)					X					X	X					
Special Affirmative				X												

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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			Actual damages, exemplary damages in the amount of p&f charged plus 10%, reasonable attorney fees. Injunctive relief is available. Ct may award punitive damages. Ct may also impose civil penalties of not less than \$500 and not more than \$50,000. Violation of this act is petty misdemeanor.		Actual damages (+consequential and incidental), statutory damages (2X points and fees), attorney fees.					Damages shall not be less than twice the total amount of finance charges and fees paid (if assignee – damages only 1X)	Damages shall not be less than twice the total amount of finance charges and fees paid (if assignee – damages only 1X)			Fine of not more than \$100 per day of violation		

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Limited Right to Cure, etc.		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)	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)	X (no violation if appropriate restitution within 30 days of the loan closing and prior to commencement of any legal action; if failure to comply was not intentional, notification can be within 60 days)	
If Violation Found, Foreclosure Prohibited, Except by Judicial Order				X (only states that no default judgment may be entered in cases of												

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				loan agreements arising as result of refinancing of personal residence unless law not violated)												

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.