

**Butera & Andrews**

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**2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 6**

11/15/02 Version

<b>CONCEPT<sup>1</sup></b>	<b>NHEMA Staff Draft Concepts</b>	<b>Nevada AB 447</b>	<b>Oklahoma HB 1944</b>	<b>Oregon HB 2807</b>	<b>Oregon HB 2764</b>	<b>Pennsylvania HB 234</b>	<b>Pennsylvania HB 1280</b>	<b>Pennsylvania HB 1703</b>	<b>Pennsylvania SB 377 – Act No. 55 of 2001</b>	<b>Pennsylvania HB 2031</b>	<b>Pennsylvania HB 2224</b>	<b>Philadelphia City Ordinance 000715-A</b>	<b>Pittsburgh City Ordinance 1676</b>	<b>Rhode Island SB 593</b>	<b>South Carolina HB 3360</b>	<b>South Carolina SR 122</b>
<b>Date of Introduction (i), Current Status, or Date of Enactment (e)</b>		03/19/01(i) dead	02/05/01(i) dead	02/09/01(i) dead	02/16/01(i) 08/10/01(e)	04/03/01(i) pending	04/03/01(i) pending	06/04/01(i) 06/25/01(e)	02/08/01(i) 06/25/01(e)	10/15/01(i) pending	12/10/01(i) pending	11/12/01(i) dead	04/17/01(i) dead	02/14/01(i) dead	01/25/01(i) dead	01/11/01(i) dead
<b>Summary of Bills Only Related to Predatory Lending</b>					Establishing loan originator registration for mortgage broker or mortgage banker; advisory committee to approve educational programs and registration examination for loan originators; requiring criminal background check for loan originators and their employees.				Regulating and licensing of mortgage bankers and mortgage brokers, imposing additional powers and duties on the Department of Banking and the State Real Estate Commission, providing penalties, providing for license exemptions, license requirements, etc.)	Amending the Loan Interest and Protection law by changing the definition of “residential mortgage” to cover loans of \$250,000 or less, secured by a lien upon real property located within the Commonwealth and containing two or fewer residential units.	Deleting certain provisions relating to the effective day of the Act regulating and licensing of mortgage bankers and brokers.			Requiring lending institutions to prominently disclose all charges and assessments that may be incurred by borrowers through prepayments of mortgage.	Providing for licensing and regulation of individuals as mortgage loan brokers and transferring the Mortgage Loan broker Board to Dept. of Labor, Licensing and Regulations.	Requiring subcommittee of the Senate Banking and Insurance committee to conduct a study of predatory lending practices.
<b>Types of Loans</b>		[includes		For loans			Loan	Loan must	Loan must			Loan				

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<b>Covered by Act</b>		all home loans (defined as real estate loans secured by home property]		=/< \$300,000.			involving a dwelling for not more than 4 families or condo; not loan for business purpose or >\$150,000.	involve property within the Commonwealth of Pennsylvania and its principal balance is less than \$100,000.	involve property within the Commonwealth of Pennsylvania and its principal balance is less than \$100,000.			involving a dwelling for no more than 4 families or condo; not loan for business purpose or >\$150,000.				
<b>Triggers</b>																
<b>Annual Percentage Rate Trigger (HOEPA = APR &gt; T-bill + 10%)</b>	(like HOEPA)		X (APR > T-bill + 8% , of varied, rate considered is maximum rate permitted)	X (APR > T-bill + 6%)		X (APR > T-bill + 5%, if varied, reasonably expected to exceed this, or rate changes not per standard market index)	X (APR > T-bill + 6.5% on first lien, or 8% on junior lien)	X (like HOEPA)	X (like HOEPA)			X (APR > T-bill + 6.5% on first lien, or 8% on junior lien)	X (APR > T-bill + 5%, if varied, reasonably expected to exceed this, or rate changes not per standard market index)			
<b>Points and Fees Trigger (HOEPA = points &amp; fees &gt; greater of 8% of total loan amount or \$400)</b>	(like HOEPA)		X (points & fees > 3% if loan => \$20,000; 4% if loan => \$20,000 and loan is purchase \$;	X (points & fees > 5% if loan > \$20,000, or points & fees > lesser of 8% or \$1,000 of		X (points & fees > 3% if loan => \$20,000; 4% if loan => \$20,000 and loan is purchase \$; lesser of 5%	X (points & fees > 4% if loan => \$16,000; or \$800 if loan <\$16,000)	X (like HOEPA)	X (like HOEPA)			X (points & fees > 4% if loan => \$16,000 ; or \$800 if loan <\$16,000)	X (points & fees > 3% (or 4% if purchase \$) of total loan amount if it is at least \$20,000.; or lesser of 5%			

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			lesser of 5% or \$800 if loan < \$20,000 (certain bona fide discount points excluded)	loan =< \$20,000 (certain bona fide discount points excluded)		or \$800 if loan < \$20,000 (certain bona fide discount points excluded)							thereof or \$800 if it's < \$20,000 (include broker fees; can exclude certain bona fide discount points)			
Other Triggers																
Restrictions on Loan Terms													Any “excessive fees and exorbitant rates”			
No Negative Amortization	X		X	X		X (any loan)	X	X (except for loans to obligors with gross income in excess on 150% of median family income; and except when negative amortization is a consequence of a temporary forbearance or restructure)	X (except for loans to obligors with gross income in excess on 150% of median family income; and except when negative amortization is a consequence of a temporary forbearance			X	X			

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									or restructure)							
No Negative Equity																
No Balloons (seasonal/irregular income adjustments typically OK)	X		X (only if is more than twice as large as the average of earlier scheduled payments)	X (only if is more than twice as large as the average of earlier scheduled payments)		X (only if is more than twice as large as the average of earlier scheduled payments)	X (only if is more than twice as large as the average of earlier scheduled payments)	X (only if is more than twice as large as the average of earlier scheduled payments)	X (only if is more than twice as large as the average of earlier scheduled payments)			X (only if is more than twice as large as the average of earlier scheduled payments)	X			
No Call Provision (Debt Acceleration)	X		X (except when repayment accelerated by default)	X		X (except when repayment accelerated by default)		X (except when repayment accelerated by default; pursuant to a due-on-sale provision; or where there is fraud or material misrepresentation an obligor in connection with the loan; or where there is any action or inaction by the obligor that adversely	X (except when repayment accelerated by default; pursuant to a due-on-sale provision; or where there is fraud or material misrepresentation an obligor in connection with the loan; or where there is any action or inaction							

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								affects the lender’s security for the loan or any rights of the lender in such security)	by the obligor that adversely affects the lender’s security for the loan or any rights of the lender in such security)							
<b>No Advance Payments</b>	X		X (if only two period payments consolidated – OK)	X (if only two period payments consolidated – OK)			X	X	X			X				
<b>No Modification or Deferral Fees</b>	X		X	X		X	X					X				
<b>No (or Very Limited) Prepayment Fees or Penalties</b>	X (use CA statute model – no fees except during 1 <sup>st</sup> 60 mo. & charge not > 6 mo. advance interest on amount prepaid in excess of 20% of	X (if loan is \$150,000 or less and acquired primarily for personal, family, or household purposes)	X (any loan)	X		X (any loan)	X	X (1. OK if within the first 60 months; 2. OK if the loan product is also available without a prepayment fee; 3. no prepayment fee on a refinancing of a covered loan with a covered	X (1. OK if within the first 60 months; 2. OK if the loan product is also available without a prepayment fee; 3. no prepayment fee on a refinancing			X	X			

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	original balance)							loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing)	of a covered loan with a covered loan if the covered loan being refinanced is owned by the refinancing lender at the time of such refinancing)							
No Increased Interest Rate After Default	X		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		X			X	X					X				

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	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 transaction into separate parts)	X (or by dividing transaction into separate parts)		X (or by dividing transaction into separate parts)										
No Enforcement if HCL Contract Leaves Blanks to be Filled In						X (any loan)										
No Waiver of a Violation of Predatory Lending Bill																
Adjustable Rate Mortgages Must Be Tied to Nationally Recognized Lending Rate																
Borrower Cannot Be Required to Provide Property Insurance on		X														

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Improvements If Insurance Exceeds Their Reasonable Replacement Value																
Limitation on Sales & Marketing													Any “fraudulent, high-pressure and misleading 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)	X (lender must obtain notice from counselor that borrower received counseling)	X (lender must give the cautionary notice – text provided in the bill)	X (lender must give the cautionary notice – text provided in the bill)				X (lender must obtain notice from counselor that borrower received counseling)			
No Lending Without Consumer’s Own Attorney																
No Loan			X (any)	X		X (any loan)	X (defined as					X (defined as	X			

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“Flipping”			loan)				refinancing existing home loan where 1) >50 % of prior debt bears lower APR, 2) it will take > 5 yrs to recoup costs, 3) existing home mortgage is subsidized by gov’n’t)					refinancing existing home loan where 1) >50 % of prior debt bears lower APR, 2) it will take > 5 yrs to recoup costs, 3) existing home mortgage is subsidized by gov’n’t)					
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor		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 can repay if monthly payments do not exceed 50% of gross monthly income, no presumption of	X (any loan)		X (any loan)	X (Presumption of ability to repay if monthly payments do not exceed 50% of gross monthly income) (if income >120% of median family income,	X (Presumption of ability to repay if monthly payments do not exceed 50% of gross monthly income; no presumption of inability solely by exceeding	X (Presumption of ability to repay if monthly payments do not exceed 50% of gross monthly income; no presumption of inability solely by exceeding			X (Presumption of ability to repay if monthly payments do not exceed 50% of gross monthly income) (if income >120% of median family income,	X				

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			inability solely by exceeding 50%)				ability to repay does not have to be considered)	50%) (if income >120% of median family income, ability to repay does not have to be considered)	50%) (if income >120% of median family income, ability to repay does not have to be considered)			ability to repay does not have to be considered)				
No Recommending or Encouraging Default on Existing Loan				X		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 loan)										

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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 Unrelated Products in Conjunction with HCL Without Borrower’s Informed Consent																
Lender Can Charge or Receive Money, Thing of Value, or Other Consideration																

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CONCEPT <sup>1</sup>	NHEMA Staff Draft Concepts	Nevada AB 447	Oklahoma HB 1944	Oregon HB 2807	Oregon HB 2764	Pennsylvania HB 234	Pennsylvania HB 1280	Pennsylvania HB 1703	Pennsylvania SB 377 – Act No. 55 of 2001	Pennsylvania HB 2031	Pennsylvania HB 2224	Philadelphia City Ordinance 000715-A	Pittsburgh City Ordinance 1676	Rhode Island SB 593	South Carolina HB 3360	South Carolina SR 122
Only if Pledged as Security or Collateral																
Point & Fee & Financing Limitations													Any financing of “excessive origination fees”			
No Financing of Points & Fees or Other Charges Payable to 3 <sup>rd</sup> Parties or of Prepayment Fees or Penalties			X	X (No financing of p&f >5% if loan > \$20,000; or lesser of 8% or \$1,000 if loan =< \$20,000; or a charge to lender or provider of bona fide loan-related goods > greater of 3% of loan or \$600)			X (if excessive fees over the trigger level => considered predatory loan)					X (if excessive fees over the trigger level => considered predatory loan)				
No Points & Fees if HCL Refinances Lender’s or Affiliate’s HCL			X					X (but OK to charge points in connection with any additional	X (but OK to charge points in connection with any							

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								proceeds paid to the obligor other than charges attributable to the covered loan) Also, no refinancing of a zero-interest or low rate loan made by gov'n't or NGO within the first 10 years, unless the current holder consents in writing).	additional proceeds paid to the obligor other than charges attributable to the covered loan) Also, no refinancing of a zero-interest or low rate loan made by gov'n't or NGO within the first 10 years, unless the current holder consents in writing).							
No Financing of Credit Insurance (except monthly premium)		X	X –any loan (credit life, credit disability, credit unemployment, debt cancellation, debt suspension,	X		X (any loan)	X	X(unless: 1. at the expiration of 18 months from the date of enactment of this act and for an additional 6 months, lender	X(unless: 1. at the expiration of 18 months from the date of enactment of this act and for an additional 6 months,			X	X			

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			etc.)					must offer the obligor the option of purchasing all such insurance on a monthly premium basis; 2. no selling without “Insurance Notice to Borrower(s)” – text provided by the bill; 3. if obligor decides to cancel, he must receive full premium refund or credit)	lender must offer the obligor the option of purchasing all such insurance on a monthly premium basis; 2. no selling without “Insurance Notice to Borrower(s)” – text provided by the bill; 3. if obligor decides to cancel, he must receive full premium refund or credit)								
Limit Broker Fees and/or Total Charges	X																
No Charging Fee Where Product or Service Not Actually Provided & No	(Gives 30 day right to cancel with full refund and later																

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Misrepresenting Amount Charged By or Paid to 3 <sup>rd</sup> Party for Product or Service	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)															
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																

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Balance																
<b>Additional Disclosures</b>																
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard 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						X (any loan)										

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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 + Borrower Should Receive His Credit Report																
<b>Other Provisions</b>			X	X												
Home						X	X (more than	X	X			X (more than	X (and when			

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Improvement Contract Proceeds Must Be Payable Jointly to Borrower & Contractor, or at Borrower’s Option to agreed upon 3 <sup>rd</sup> Party Escrow Agent							25% of total proceeds of loan may not be disbursed at closing; special notice to be furnished by contractors required)					25% of total proceeds of loan may not be disbursed at closing; special notice to be furnished by contractors required)	contractor has been found within previous 24 months at least twice in violation of any law prohibiting deceptive practices)				
Various Other Restrictions on Home Improvement Lending / Contracting																	
Required Reporting to Credit Bureaus								X (also a lender must verify that a mortgage broker holds a license currently in effect to do business within the Commonwealth of Pennsylvania)	X (also a lender must verify that a mortgage broker holds a license currently in effect to do business within the Commonwealth of Pennsylvania)								
Additional	X (new					X (lenders											

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Governmental Reporting Requirements	Homeowner's Equity Recovery Act, HERA, provisions that give both strong notice & new borrower's right to sell during 90-day period and recovery remaining equity after paying debt.)					exempt from reporting pursuant to 12 U.S.C. 2803 must report to the Secretary of Banking 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															
Enforcement & Liability			X	X (violations deemed)												

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				“unconscionable tactics” under ORS 646.607)												
Violations Deemed Unfair & Deceptive Acts & Practices	X	X (a person who engages in unfair practices prohibited by this act is guilty of misdemeanor, and also civilly liable at suit by AG)														
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)																
Special Affirmative Pleading Requirements for Lenders & Various Affirmative Defenses for																

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<b>Borrowers</b>																
<b>Any Payments Collected in Excess of the Statutorily Permitted Amounts Must Be Refunded to Borrower</b>			Borrower may recover reasonable costs and attorney fees; damages can be recovered under this act or state law, but not both.	Prevailing plaintiff may collect twice the total amount of points, fess, interest, and court shall award reasonable attorney fees; ct may provide other equitable remedies.												
<b>Substantial Monetary Penalties</b>		If sued by AG, penalty cannot exceed 5% of gross income realized from home loans	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,	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,			X (Damages: actual damages, exemplary damages of \$300 for each day of violation, etc.; Penalties: fine between \$100 and \$300, imprisonment up to 90 days)	Administrative penalties; 1) a civil penalty up to 42,000 for each offense; 20 suspension of license, 3) removal of an individual from working in this capacity. Civil liability: if purposeful	Administrative penalties; 1) a civil penalty up to 42,000 for each offense; 20 suspension of license, 3) removal of an individual from working in this capacity. Civil			X (Damages: actual damages, exemplary damages of \$300 for each day of violation, etc.; Penalties: fine between \$100 and \$300, imprisonment up to 90 days)				

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			appropriate restitution must be made within 60 days after discovery of compliance failure and prior to action)	appropriate restitution must be made within 60 days after discovery of compliance failure and prior to action)				pattern or practice of material violations, a civil action to recover damages may be initiated.	liability: if purposeful pattern or practice of material violations, a civil action to recover damages may be initiated.								
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	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					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					

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						action)	action)					action)				
If Violation Found, Foreclosure Prohibited, Except by Judicial Order																

<sup>i</sup> 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.