

BUTERA & ANDREWS

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 7

09/19/02 version

CONCEPT ¹	NHEMA Staff Draft Concepts	Tennessee HB 1445 / SB 1158	Texas SB 401	Texas HB 1437	Texas HB 1493	Texas SB 1581	Texas HB 3238	Texas HB 3239	Texas HB 3240	Texas HB 3241	Utah HJR 16	Virginia HB 2708	Virginia HB 2787	Washington HB 1205 / SB 5066	West Virginia SB 418	West Virginia HB 2596
Date of Introduction (i), Current Status, or Date of Enactment (e)		HB 1445: 02/15/01(i) dead SB1158: 02/01/01(i) postponed indefinitely	01/25/01(i) dead	02/08/01(i) dead	02/12/01(i) 05/28/01(e)	03/09/01(i) 06/11/01(e)	03/08/01(i) dead	03/08/01(i) dead	03/08/01(i) dead	03/08/01(i) dead	01/29/01(i) dead	01/17/01(i) 03/22/01(e)	01/19/01(i) 03/22/01(e)	01/19/01(i) 04/19/01(e)	03/07/01(i) 05/02/01(e)	03/01/01(i) dead
Summary of Bills Only Related to Predatory Lending					Relating to the regulation of mortgage brokers.		Prohibiting lenders, appraisers, or real estate agents from making false, deceptive, or misleading statement in connection with home loans.	Making void home loan documents in which blanks are left to be filled in after it is signer by borrower.	Prohibiting lenders from charging fees for products not provided or misrepresenting amounts charged by or paid to another person for products or services.	Prohibiting lenders from charging fees for various types of credit insurance, and fees for debt cancellation or suspension agreements.	Requiring the Legislative Management Committee to assign to appropriate interim committees a duty to conduct studies and make recommendations regarding various topics (e.g. predatory mortgage lending).	Prohibiting mortgage lenders and brokers from flipping mortgage loans.	Increasing the maximum penalty for a violation of the Mortgage Lender and Broker Act; increasing the amount of the bond to be posted; prohibiting loans if reliance on real estate as the source of repayment; prohibiting encouragement to default.	Relating to licensing and regulation of consumer loan companies, e.g. prohibiting misleading and fraudulent practices).	Permitting companies that sell credit insurance incident to their primary business to be licensed by the insurance commission.	Relating to regulation of residential mortgage lenders, brokers and services.
Types of Loans Covered by Act		Loan involving a dwelling for single family or loan <\$300,000.	Loans for household purposes, secured by borrower's home or dwelling for			Loans for household purposes, secured by borrower's home or dwelling for										

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			4 or fewer families, principal amount =< ½ of maximum conventional loan amount as per Fannie Mae, and credit transaction of \$20,000 or more.			4 or fewer families, principal amount =< ½ of maximum conventional loan amount as per the Federal Mortgage Association, and credit transaction of \$20,000 or more.										
Triggers																
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 10%)	(like HOEPA)	(like HOEPA)	X (APR > T-bill + 7%)	X (APR > T-bill + 6.5%)		(like HOEPA)										
Points & Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$400)	(like HOEPA)	X (points & fees > 5% of total loan amount if it is at least \$20,000; or lesser of 8% thereof or \$1,000 if it's < \$20,000) (include broker fees;	X (points & fees > 5% of total loan amount)	X (points & fees > 4% of total loan amount)		(like HOEPA)										

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		can exclude certain bona fide discount points)														
Other Triggers		X (prepayment fees more than 30 months after closing or prepayment fees > 2% of amount prepaid)														
Restrictions on Loan Terms																
No Negative Amortization	X	X		X		X										
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, unless balloon payment is due not less than 60 months after closing; this										

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						provision does not apply to certain bridge loans)										
No Call Provision (Debt Acceleration)	X	X (except when repayment accelerated by default)		X												
No Advance Payments	X	X (if only two periodic payments consolidated – OK)		X (if only two periodic 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 penalty on any 1 st mortgage of \$150,000 or less; but, no limitation if preempted by federal law) (any loan)		X (any loan) (OK if during introductory /initial interest rate period; also, no prepayment penalty if HCL refines lender’s or affiliate’s HCL)		X										
No Increased Interest Rate After Default	X	X		X												

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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 Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan		X (or by dividing any loan transaction into separate payments)		X (no dividing any loan transaction into separate payments)												
No Enforcement if HCL Contract Leaves Blanks to be Filled In				X (any loan)									X			
No Waiver of a Violation of Predatory Lending Bill																
Adjustable Rate Mortgages Must Be Tied to																

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Nationally 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)															
No Lending Without Consumer’s Own Attorney																
No Loan “Flipping”						X (any loan; no replacement or consolidation of low-										

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						rate home loan (APR </= T-bill minus 2%) funded by govnt before 7 th anniversary unless new loan has lower APR and p&f, or is a restructure to avoid foreclosure)										
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor																
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 inability solely by exceeding		X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income, no presumption of inability solely by exceeding		X										

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		50%)		50%)												
No Recommending or Encouraging Default on Existing Loan				X (any loan)									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 (any loan)												
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation				X (any loan)												
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																

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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 Only if Pledged as Security or Collateral		X (if loan <\$300,000) (In any event, borrower may sell, transfer, of convey any property other than 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 (not more than 3% or loan or \$600 whichever is less)												
No Points & Fees if HCL Refinances Lender’s or Affiliate’s HCL		X		X												
No Financing of				X (any loan)		X (any loan)										

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Credit Insurance (except monthly premium)																
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 (any loan)												
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																

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No Fee For Balance																
Additional Disclosures																
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard Insurance, Principal/Interest /Mortgage Insurance.			72 hours before closing, the following must be disclosed: prepayment penalty, monthly payments, variable rate, value of counseling; new disclosure required if changes in fees > lesser of \$400 of ½% of loan)	3 days before closing, the following must be disclosed: prepayment penalty, monthly payments, variable rate, fees, payments to 3 rd parties, value of counseling and list of counseling agencies)		If ANY HOME LOAN with APR > 12%, 3 days after application is made, the following must be disclosed: value of counseling, list of counselors, list of resources with mortgage info, other disclosures required by finance commission										
Debt Consolidation Loans - Notice At or Prior to Application that Aggregate Amount &																

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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)				X (any loan)												
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																

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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												
Various Other Restrictions on Home Improvement Lending / Contracting																
Required Reporting to Credit Bureaus																
Additional Governmental Reporting	X (new Homeowners’ Equity			X (lenders exempt from												

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Requirements	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.)			reporting pursuant to 12 U.S.C. 2803 must report to the Finance Commissioner just like other lenders) (Average and median interest rates must be reported)												
Broker Deemed to be Lender’s Agent		X														
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				X (notice to assignee or purchaser that loan subject to												

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Market)				special rules)												
Special 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 (Damages: actual damages, punitive damages up to \$10,000, and court costs)				FOR HOME LOANS with APR > 12%: in case of a violation of disclosure requirements (see above), borrower may recover actual damages, punitive damages up									

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2001 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 7

09/19/02 version

CONCEPT ¹	NHEMA Staff Draft Concepts	Tennessee HB 1445 / SB 1158	Texas SB 401	Texas HB 1437	Texas HB 1493	Texas SB 1581	Texas HB 3238	Texas HB 3239	Texas HB 3240	Texas HB 3241	Utah HJR 16	Virginia HB 2708	Virginia HB 2787	Washington HB 1205 / SB 5066	West Virginia SB 418	West Virginia HB 2596
						to \$10,000, and court costs.										
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)												
If Violation Found, Foreclosure Prohibited, Except by Judicial Order																

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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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