

Butera & Andrews

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2002 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 2

09/19/02 version

CONCEPTⁱ	NHEMA Staff Draft Concepts	Florida SB 2380	Miami-Dade County R-96-02	Georgia HB 1361	Georgia SB 435	Hawaii HB 2642	Hawaii HB 151 / SR 62 / SCR 114 / HCR 211	Illinois HB 5400	Illinois HB 4939	Indiana HB 1142	Iowa SCR 111	Iowa HB 2412	Kentucky HB 235	Kentucky SB 145	Massachusetts HB 5162 (proposed amendment to Reg. 209 CMR 40.00)
Date of Introduction (i), Current Status, or Date of Enactment (e)		02/27/02 (i) dead	01/16/02 (i) 01/29/02 (e)	02/12/02 (i) 04/23/02 (signed by Governor)	02/11/02 (i) dead	01/24/02 (i) dead	HR 151: 03/13/02 (i) dead SR 62: 03/14/02 (i) dead SCR 114: 03/14/02 (i) dead HCR 211: 03/13/02 (i) dead	02/06/02 (i) pending	02/05/02 (i) pending	02/05/02 (i) dead	01/29/02 (filed as SCR 106) dead	02/19/02 (i) dead	01/08/02 (i) dead	01/29/02 (i) dead	06/20/02 (i) pending
Summary of Bills Only Related to Predatory Lending			Creates an anti-predatory lending task force.		Act creates “the Council for the Prevention of Predatory Lending Through Education”		Requests the Director of Commerce and Consumer Affairs to convene a task force on abusive lending practices.	Provides only a short title.	Relates to recording of liens on residential real estate.		Provides for the establishment of a committee by the legislative council to conduct a study of predatory or subprime lending.	Amends various provisions of IA Code to address predatory lending practices.	Subjects loan brokers regulated by the Department of Housing and Urban Development to the requirements of registration and continuing education.		
Types of Loans Covered by Act						Applies only to loans > \$500,000.				Applies to loans, including open-end credit plans, other than reverse				Applies to loans or extension of credit (including open-end lines of credit but	Does not include reverse mortgages or unsecured open-end credit plans.

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										mortgages.				excluding reverse mortgages) as defined in Regulation Z.	
Triggers															
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 8% for first mortgage lien, or + 10% for junior lien mortgage)	(like HOEPA)	(like HOEPA)		<u>COVERED LOAN</u> : APR > the higher of 4% (5.5% for junior lien) above prime rate or 2% (3% for junior lien) above 90-day standard delivery commitment with comparable term. <u>HCL</u> : (like HOEPA and Regulation Z)		(like HOEPA)				APR > 5-year T-bill + 6% for first mortgage lien, or + 8% for junior mortgage lien.				(like Regulation Z)	APR > T-bill + 8% for first mortgage lien, or + 9% for junior mortgage lien.
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$480 (for 2002))	(like HOEPA)	(like HOEPA)		<u>COVERED LOAN</u> : P&f > 3% of total loan amount. <u>HCL</u> : P&f > 5 % of total loan amount		(like HOEPA)				P&f > 3% of total loan amount for loans => \$30,000, or the lesser of \$900 or 6%				NO P&F TRIGGER! Definition of prepaid finance charge: charges	P&f > the greater of 5% of total loan amount or \$400 (to be adjusted annually by changes in CPI)

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				for loans => \$20,000, or the lesser of 8% of total loan amount or \$1,000 for loans < \$20,000. Definition of p&f includes, among others: all compensation paid directly to broker, cost of all premiums for credit and other insurance financed by lender, maximum prepayment penalties, all prepayment penalties charges during refinancing by same lender.						of total loan amount for loans < \$30,000. Definition of p&f includes, among others: all compensation paid directly to broker, cost of all premiums for credit and other insurance financed by lender, maximum prepayment penalties, all prepayment penalties charges during refinancing by same lender (and for open-ended loans: total				incident to loan paid before or at consummation, fees paid to lender in connection with credit life, accident, health, disability or unemployment insurance.	

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										fees charged plus maximum additional fees permitted).					
Other Triggers										Loan documents permit lender to charge prepayment fees more than 30 months after closing or which exceed more than 2% of amount prepaid.					
Restrictions on Loan Terms															
No Negative Amortization	X	X		X		X (except for special purpose lending program sponsored by gov'n't or NGO)				X		X (no balloon resulting from negatively amortizing repayment; consumer		X	X

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												can refinance balloon without penalty; terms of refinancing may not be less favorable)			
No Negative Equity															
No Balloons (defined as a scheduled payment that is more than twice as large as the average of earlier scheduled payments) (seasonal/irregular income adjustments typically OK)	X	X (for loans < 5 yrs; except bridge loans)		X		X (unless balloon is payable not less than 36 months after origination; prohibition does not apply to bridge loans)				X		X		X (for loans < 7 yrs; except bridge loans < 1 yr)	X (for loans < 7 yrs; except bridge loans < 1 yr)
No Call Provision (Debt Acceleration; Due-On-Demand Clause) (except when repayment accelerated by default)	X			X (acceleration OK if due to borrower’s failure to abide by the material terms of the loan)		X (or except pursuant to due-on-sale provision, or if there is fraud or material misrepresentation by obligor; or inaction or action by obligor)				X (any home loan)				X	X (OK if due to fraud or material misrepresentation by consumer; consumer had been contacted in writing; creditor’s is materially affected by borrower’s action or inaction)

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						adversely affecting lender's security)									
No Advance Payments (if more than 2 period payments are consolidated)	X	X		X		X				X				X	X
No Modification or Deferral Fees	X			X						X				X (if after modification, loan is still HCL, or if no longer HCL, APR has not been reduced by at least 2%; this does not apply if loan is > 60 days delinquent and modification is part of work-out process)	X (unless the loan is no 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%)	X (pp allowed only during first 3 years but terms of pp must be disclosed to borrower at least 3 days prior to consummati		X (during 1 st year: no pp if > 2% of the loan amount prepaid; during 2 nd year: no pp >1% of the total loan amount; no		X (no pp after first 36 months, unless: pp may not exceed payment of 6 months' advance interest on amount				X (during 1 st year: no pp if > 2% of the loan amount prepaid; during 2 nd year: no pp >1% of the total loan amount; no		X (also applies to alternative mortgages as defined in 12 U.S.C. 3802)		X (no pp after 3 rd year; during 1 st year: no pp if > 3% of the loan amount prepaid; during 2 nd year: no pp >2% of the total loan	X

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	of original balance)	on and borrower must be given choice of product without pp)		pp after 2 nd year)		prepaid in any 12-month period in exceed of 20% of original principal amount; no pp is HCL accelerated due to default)				pp after 2 nd year)				amount; during 3 rd year: no pp > 1% of total loan amount; source of prepayment funds may not be refinancing by lender or his affiliate; at consummation , total monthly debts =/< 50% of borrower’s gross income)	
No Increased Interest Rate After Default	X	X		X		X				X				X (and no default charges > 5% of amount in default; if loans accelerated due to default, rebate of interest must be calculated by method as favorable as actuarial method; no unconscionable interest rate (in general))	X (OK if during first 3 years; OK if source of prepayment is not refinancing by lender or affiliate; OK if total monthly debts </+ 50% of consumer’s gross income)

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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 provision requiring borrower to use less convenient, more costly, or more dilatory forum – agreement is unconscionable and void)						X				X	X (No “oppressive” mandatory arbitration clause or waiver of participation in class action lawsuits)
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan, Dividing Transaction into Separate Parts, or Any Other Subterfuge										X		X			
No Enforcement if HCL Contract Leaves Blanks to be Filled In						X									
No Waiver of a Violation of Predatory Lending Bill Adjustable Rate Mortgages															

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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 & Marketing										No policy encouraging making HCL on the basis of race, ethnicity, gender, or age.					
No Lending Without Prior Credit Counseling	X (lender must give strong cautionary notice, saying should consider counseling, & give state-approved list of counselors)	X (special disclosure notice must be provided to borrower)		X (lender must receive a certification that borrower received counseling, and special disclosure notice must be provided to borrower)		X (lender must give special cautionary notice)				X (lender must receive a certification that borrower received counseling)				X (special disclosure notice must be provided to borrower)	X (special disclosure notice must be provided to borrower; list of counselors, waiver signed by borrower)
No Lending Without Consumer's Own Attorney															
No Loan “Flipping”				X (any home loan):						X (any home loan)		X (any home loan)			

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				<p>“Flipping” is defined as: (1) making COVERED LOAN that refinances HL consummated within last 5 years without reasonable, tangible, net benefit. “Flipping” presumed if: (1) COVERED LOAN refinance HL consummated within last 5 years that is special mortgage originated, subsidized, or guaranteed by gov’n’t or NGO which bears below-market IR or has</p>						<p>“Flipping” is presumed if: if: (1) refinancing in which the primary tangible benefit is a lower interest rate and it will take more than 4 years to recoup expenses; and (2) refinancing of a special mortgage originated, subsidized, or guaranteed by state, tribal, or local gov’n’t or NGO.</p>		<p>“Flipping” is presumed if: (1) refinancing in which the primary tangible benefit is a lower interest rate and it will take more than 4 years to recoup expenses; and (2) refinancing of a special mortgage originated, subsidized, or guaranteed by state, tribal, or local gov’n’t or NGO.</p>			

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				nonstandard payments and borrower will lose these benefits.											
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor						X (also, no refinancing by same lender within 12 months; broker may not solicit refinancing of HCL made by same broker within 24 months)								X	
No Steering												X (no home loan with higher IR than appropriate for consumer for purpose of increasing broker's compensation)			
No Lending Without Due Regard for Repayment Ability (HOEPA applies)	X (handled by limiting financing of	X		X (presumption borrower		X (lender is presumed to have				X (presumption that loan		X (presumption borrower		X (presumption borrower can	X (Presumption of ability to repay if monthly payments

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only in “pattern & practice” cases)	points/fees on refinancing within 12 mo.)			can repay if his total monthly debts do not exceed 50% of his monthly gross income)		violated this provision if he engages in pattern or practice of making HCL without verifying borrower’s repayment ability; lender may make loan based on stated income, but may not knowingly or willfully originate stated income loan to evade this provision)				was made with due regard for repayment ability if creditor follows debt-to-income ratio and residual income guidelines)		can repay if his total monthly debts do not exceed 50% of his monthly gross income and borrower has sufficient residual income to pay essential monthly expenses after paying his monthly debts; if income >120% of median family income, ability to repay does not have to be considered)		repay if his total monthly debts do not exceed 50% of his monthly gross income)	do not exceed 50% of gross monthly income) (if income >120% of median family income, ability to repay does not have to be considered)
No Recommending or Encouraging Default on Existing Loan				X (any home loan)		X				X (any home loan)				X	X
No Compensating, Coercing or Intimidating	X (Presumption)														

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Appraiser to Influence Judgment on Property Value	can repay if monthly payments do not exceed 55% of gross monthly income; no presumption of inability solely by exceeding 55%)														
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation						X								X (no advertising that HCL will reduce monthly debt payments without also disclosing that HCL may also increase number of monthly payments and total amount paid.	X (no advertising of refinancing without disclosing that HCL will increase # on monthly payments and aggregate amount to be repaid)
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																X (unless disclosed to borrower orally and in writing at least 3 days prior to closing)	
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						X (no prepaid finance charge that exceeds greater of 5% of principal amount of \$2,000)	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)
No Points & Fees if Proceeds of HCL Are Used to Refinance Lender’s or Affiliate’s HCL						X (lender may not finance pp through new loan originated by same lender)										X (if such refinancing within 2 years, prepaid finance charge shall not exceed greater of 5% of principal amount of \$2,000; prepaid finance charge	X (refinancing not within last 2 year and p&f cannot exceed 5% of additional proceeds received by borrower in connection with refinancing other than appraisal fees, credit report fees, fire, property, disability

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															on additional proceeds shall not exceed 5% of additional proceeds)	insurance, etc – these cannot be financed by creditor if monthly payments of obligor >50% of m. gross income)
No Financing of Credit Life, Disability, Unemployment, or Any Other Life or Health Insurance Premiums (except monthly premium)				X (any home loan) (no financing of various insurance payments and payments for debt cancellation agreements that provides for cancellation of borrower’s liability; or no financing of various insurance without regard to ID of beneficiary)		X (unless option of purchasing all such insurance on monthly premium basis; or borrower must receive special disclosure notice)				X (any home loan) (and no financing of payments for debt cancellation or suspension agreements)		X (any home loan)		X (borrower must be given option to purchase insurance on monthly premium basis; borrower must have right to cancel and get refund	X (no loan which contains single-premium credit life, debt cancellation, and debt suspension)	
Limit Broker Fees and/or Total Charges	X															
No Charging Fee Where	(Gives 30 day					X									X (no fees for	X (includes

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Product or Service Not Actually Provided & No Misrepresenting Amount Charged By or Paid to 3 rd Party for Product or Service	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)														services not actually performed which are not bona fide and reasonable)	services not actually performed; services for which the fees bear no reasonable relationship to value of services; fees are other wise unconscionable)
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				X (late fee OK if not > 5% of the total amount past due; loan documents specifically authorize it;		X (late fee OK if not > 5% of the total amount past due; it may only be assessed for a payment past due 15				X (any home loan) (late fee OK if not > 4% of the total amount past due; it may only be						

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				it may only be assessed for a payment past due 10 days or more; it may not be charged more than once)		days or more; it may not be charged more than once)				assessed for a payment past due 15 days or more; it may not be charged more than once; no late fee without notification within 45 days of the due date)					
No Fee For Balance				X (any home loan) \$10 processing fee OK if provided by fax or within 60 days of previous request)		X				X (any home loan)					
Additional Disclosures															
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard Insurance, Principal/Interest/Mortgage Insurance.														X (APR, regular monthly or other periodic payments, statement that monthly payments may increase (for	X (APR, regular payments, balloon payments, variable rate, amount borrowed)

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														variable rate transactions) must be disclosed)	
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 (as part of specific notice to borrower; must also disclose APR and amount of monthly payments)													X
Translate Certain Loan Documents 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 Notice When Foreclosing				X (notice of the intent to foreclose)						X (notice of the right to cure the default)					
Notice That In Business of															

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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				X				X	X
Various Other Restrictions on Home Improvement Lending / Contracting				X (must receive affidavit of completion)											
Required Reporting to Credit Bureaus														X (annual reporting of both favorable and unfavorable credit history)	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 right to sell)														

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	during 90-day period and recovery remaining equity after paying debt.)														
Broker’s Duties															
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)		X (must receive special notice)		X						X (also, remedies apply to creditor, director, officer, employee, etc.)				X (must receive special notice)	X (must receive special notice)
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												X (intentional violation makes loan)		X	

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												voidable; creditor has no right to collect, receive, or retain any principal, interest or other charges; consumer may recover payments made under loan)			
Substantial Monetary Penalties				X (actual damages, statutory damages (2x interest paid under loan and forfeiture of interest due under loan for violation of certain provisions of this Act), punitive damages, costs and reasonable attorney		X (actual damages, additional amount not to exceed \$5,000, reasonable attorney fees, and court costs; total recovery in class action may not exceed sum of actual damages and lesser or \$500,000 or				X (actual damages, statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation), costs and reasonable attorney fees)		X (actual damages, statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation), costs and reasonable attorney fees)		X (administrative penalties of not more than \$2,500 per each violation; civil penalty of \$15,000 for action brought by State, or \$15,000 or actual damages, and costs, whichever is greater, for actions brought by consumer, for	

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				fees; criminal penalties: fine not exceeding \$1,000 for each violation or imprisonment not exceeding 6 months)		1% of net worth of creditor)								willful and knowing violation)	
Corrections and Unintentional Violations				X (no violation if appropriate restitution within 90 days of loan closing and prior to notice of compliance failure; in case of bona fide error, appropriate restitution must be made within 90 days after discovery of compliance failure and prior to		X (no violation if appropriate restitution made within 60 days after discover of error and prior to institution of action; no violation if bona fide error shown by preponderance of evidence)				X (no violation if appropriate restitution within 30 days of 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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				notice of compliance failure)						compliance failure and prior to action)					
Additional Limitations on Foreclosing				X (creditor must use juridical foreclosure procedures set out in GA Code; borrower may assert nonexistence of default, or any other claim or defense based on violations of this Act; borrower may cure default)						X (creditor must use juridical foreclosure procedures of the state where property securing loan is located; borrower may assert nonexistence of default, or any other claim or defense based on violations of this Act; borrower may cure default)					
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.

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