

**BUTERA & ANDREWS**

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**2002 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 3**

01/10/03 version

CONCEPT <sup>i</sup>	NHEMA Staff Draft Concepts	Maryland HB 649 / SB 499	Maryland SB 841	Michigan HB 6121	Michigan – Detroit Ordinance (revised version)	Minnesota SB 2839	Minnesota SB 2988	Minnesota SB 3030 / HB 3434	Minnesota HB 3257	Minnesota HB 3728	Minnesota HF 13	Mississippi HB 414 / SB 2674	Mississippi HB 1646	Mississippi HB 1522	Missouri HB 1254
<b>Date of Introduction (i), Current Status, or Date of Enactment (e)</b>		HB 649: 02/04/02 (i) 05/16/02 (signed by Governor) SB 499: 02/01/02 (i) dead	02/14/02 (i) dead	05/23/02 (i) 12/23/02 (signed by Governor)	11/14/02 (i) dead – vetoed by Mayor	02/04/02 (i) dead	02/11/02 (i) 04/17/02 (signed by Governor)	SB 3030: 02/11/02 (i) dead HB 3434: 02/14/02 (i) pending	02/11/02 (i) dead	05/13/02 (i) dead	09/19/02 (i) dead	HB 414: 01/08/02 (i) dead SB 2674: 01/21/02 (i) dead	01/21/02 (i) dead - vetoed by Governor	01/22/02 (i) 04/01/02 (signed by Governor)	01/09/02 (i) dead
<b>Summary of Bills Only Related to Predatory Lending</b>		Provides that only the State may enact legislation which purports to regulate extensions of credit.	Prohibits lenders and credit grantors from financing, directly or indirectly, any single premium insurance coverage as part of a mortgage loan; also provides for penalties.		The ordinance also defines “predatory lender,” “predatory loan,” and “predator y purchaser.” <b>“Predatory loan” is loan that contains fraudulent, deceptive, or unfair trade practices; charges fees for products not actually provided; flips pre-existing loan; lender recommends or encourages default; is threshold loan that has balloons (does</b>	Memorializes the President and Congress to amend federal law so as to permit states to regulate prepayment penalties on mortgage loans made by all lenders.	Relates to financial institutions; regulates detached facilities, certain charges and fees, and mortgage prepayment penalties.		Relates to financial institutions; regulates detached facilities, certain charges and fees, and mortgage prepayment penalties.	Relates to the state board of investment; prohibits investment of state and retirement funds in predatory lenders.		Amends MS Mortgage Consumer Protection Law; regulates licensing and the activities of licensees; does not regulate HCL.	Defines “other charges” and provides remedy for receiving unlawful “finance charges.”	Amends MS Mortgage Consumer Protection Law; regulates licensing and the activities of licensees; does not regulate HCL.	

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					not apply for bridge loans and loans with terms of 15 yrs or more and home equity loans of \$10,000 or less), negative amortization, financed insurance premiums, call provision, advance payments, modification penalty, prepayment penalty, increased interest after default, and payments do not fully amortize property taxes and homeowners insurance premiums.										
Types of Loans Covered by Act				Applies to all mortgage loans, excluding	Applies to loans secured by property located in the			Applies to loans, including open-end			Applies to loans, other than open-end credit plans or				Applies to loans, other than open-end credit

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				reverse mortgages, and open-end credits.	City of Detroit; does not include reverse mortgages and loans primarily for business purpose.			credit plans, other than reverse mortgages; loans are equal to or less than maximum amount for loans eligible for sale to Fannie Mae or Freddie Mac.			reverse mortgages.				plans or reverse mortgages; loans are equal to or less than conforming loan size limit for single-family dwelling as established by Fannie Mae.
<b>Triggers</b>															
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 8% for first mortgage lien, or + 10% for junior lien mortgage)	(like HOEPA)	(like HOEPA minus 1%)			APR > T-bill + 6% for first mortgage lien, or + 8% for junior mortgage lien.			APR > 5-year T-bill + 6% for first mortgage lien, or + 8% for junior mortgage lien.			APR > 5-year T-bill + 6% for first mortgage lien, or + 8% for junior mortgage lien.				APR > 1-year T-bill + 5%
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$480 (for 2002))	(like HOEPA)	(like HOEPA)			P&f > 5% of total loan amount for loans => \$16,000; or \$800 for loans < \$16,000.			P&f => greater of 5% of total loan amount or \$800. Definition of p&f includes, among others: all compensation paid directly			P&f > 3% of total loan amount for loans => \$30,000; or the lesser or \$900 or 6% of total loan amount for loans < \$30,000.				P&f > 3% (or 4% if purchase \$ loan guaranteed by FHA/VA) of total loan amount for loans => \$20,000, or

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								to broker, cost of all premiums for credit and other insurance financed by lender.			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 pp that may be charged, all pp charged if loan is refinanced by creditor of his affiliate.					the lesser of \$800 or 5% of total loan amount for loans < \$20,000.
Other Triggers											Prepayment penalty trigger: loan agreement permits lender to charge or collect payment penalties more than 30 months after loan closing or which exceed					

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											2% of amount prepaid.				
<b>Restrictions on Loan Terms</b>															
No Negative Amortization	X							X			X				X
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 (applies to loans with term < 5 years; does not apply to bridge loans with maturity < 1 year connected with acquisition of principal dwelling)							X				X
No Call Provision (Debt Acceleration; Due-On-Demand Clause) (except when repayment accelerated by default)	X										X (any home loan) (and OK if repayment accelerated due to borrower’s failure to abide by material terms of loan)				X
No Advance Payments (if more than 2 period payments are consolidated)	X										X				X
No Modification or Deferral Fees	X										X				X
No (or Very Limited)	X (use CA						X (no pp for		X (no pp for		X (no pp				X

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Prepayment Fees or Penalties	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 original balance)						partial prepayment; no pp for any prepayment of residential mortgage loan upon sale of any residential real property or interest thereof; no pp for prepayment more than 42 months after date of note; no pp which exceeds lesser of 2% of unpaid principal balance or amount equal to 60 days’ interest (otherwise disclosure is required))		partial prepayment; no pp for prepayment more than 42 months after date of note; no pp which exceeds lesser of 2% of unpaid principal balance or amount equal to 60 days’ interest (otherwise disclosure is required))		which exceed in the aggregate (1) during 1 <sup>st</sup> year after closing, more than 2% of total loan amount prepaid; or (2) during 2 <sup>nd</sup> year, more than 1% of total loan amount. No pp after 2 <sup>nd</sup> year)					
No Increased Interest Rate After Default	X										X					X
No Mandatory Arbitration Limiting Judicial Relief	X (clause must require proceeding to be in										X					X

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	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														
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	X										X
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		X													

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Property Insurance on Improvements If Insurance Exceeds Their Reasonable Replacement Value															
<b>Limitation on Sales &amp; Marketing</b>															
No Lending Without Prior Credit Counseling	X (lender must give strong cautionary notice, saying should consider counseling, & give state-approved list of counselors)	X (written recommendation that borrower seek home buyer education or housing counseling; list of agencies providing counseling)		X (borrower must be provided with “Borrower’s Bill of Rights” and specific counseling notice)	X (mandatory counseling for all threshold loans; lender must receive certificate that borrower received counseling from approved counselor; no lending without cautionary notice)			X (special disclosure notice must be provided to borrower)				X (lender must receive a certification that borrower received counseling)			X (lender must receive a certification that borrower received counseling)
No Lending Without Consumer’s Own Attorney															
No Loan “Flipping”								X (no refinancing by same lender or affiliate within 24 months after consummation, unless total points and fees collected				X (any home loan) (Flipping is presumed if: (1) tangible benefit is interest rate lower than interest rate on refinanced debts and it			X

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								from existing loan are refunded; no refinancing of special mortgages unless documentation signed by independent counselor or original lender that borrower received counseling)			will take more than 4 years to recoup costs; or (2) new loan refinances special mortgage)					
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor											X (any home loan) (this is considered “loan flipping”)					
No Steering																
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 45% of gross monthly income) (if income >120% of median			X (Presumption that borrower may repay if monthly payments do not exceed 50% of gross monthly income, and borrower has sufficient residual income (as defined in			X (Presumption of no ability to repay if monthly payments exceed 55% of gross monthly income) (if income >120% of median			X (presumption that loan made with due regard to repayment ability if lender follows debt-to-income ratio listed in CFR and VA form 26-6393)					X

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		family income, ability to repay does not have to be considered)			38 CFR 36.4337(E))			family income, presumption may be overcome) Lender who made loan to meet borrower’s financial emergency shall benefit from rebuttable presumption that loan was made with due regard to repayment ability)								
No Recommending or Encouraging Default on Existing Loan											X (any home 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			X												X

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	exceeding 55%)														
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation				X											X
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 Only if Pledged as Security or Collateral		X													
<b>Point &amp; Fee &amp; Financing Limitations</b>															
No Financing of Points & Fees or Other Charges Payable to 3 <sup>rd</sup> Parties or of Prepayment Fees or Penalties					X (not more than 5% of loan amount)		X (not more than 3% of loan amount; if violation of this provision, lender must pay borrower		X (not more than 3% of loan amount)		X				

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							2x amount in excess of 3%)									
No Points & Fees if Proceeds of HCL Are Used to Refinance Lender’s or Affiliate’s HCL																
No Financing of Credit Life, Disability, Unemployment, or Any Other Life or Health Insurance Premiums (except monthly premium)		X (no financing of single premium credit health insurance, credit involuntary unemployment benefit insurance, and credit life insurance.		X				X			X (any home loan) (also includes debt cancellation or suspension agreements)					X
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 <sup>rd</sup> 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			X												X

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01/10/03 version

CONCEPT <sup>i</sup>	NHEMA Staff Draft Concepts	Maryland HB 649 / SB 499	Maryland SB 841	Michigan HB 6121	Michigan – Detroit Ordinance (revised version)	Minnesota SB 2839	Minnesota SB 2988	Minnesota SB 3030 / HB 3434	Minnesota HB 3257	Minnesota HB 3728	Minnesota HF 13	Mississippi HB 414 / SB 2674	Mississippi HB 1646	Mississippi HB 1522	Missouri HB 1254	
	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											X (any home loan) (late fee OK if not > 4% of the total amount past due; it may only be 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			X (any home loan)					

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<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 into Language Other Than English (if another language used during discussions)															X
Notice At or Before Application Whether Loan Will Be Sold & If So, To Whom (or Can Not Sell Loan for 180 Days)					X (lender may not sell threshold loan without notice that this is threshold loan subject to ordinance)										
Additional Notice When Foreclosing															
Notice That In Business of Arranging Loans for Fees, What Fee Will Be															

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Charged and How Calculated + Borrower Should Receive His Credit Report															
<b>Other Provisions</b>															
Home 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					X						X				X
Various Other Restrictions on Home Improvement Lending / Contracting											X ( creditor must be presented with completion certificate)				
Required Reporting to Credit Bureaus					X (only favorable history)										
Additional Governmental Reporting Requirements	X (new Homeowners’ Equity Recovery Act , HERA, provisions that give both strong notice & new borrower’s right to sell during 90-day period and recovery remaining														X (lenders who are exempt from reporting requirements of 12 U.S.C. 2803 are required to report same info as required in 12 U.S.C. 2803(b))

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	equity after paying debt.)														
Broker’s Duties															
Lender May Not Make Investments Backed By Loans That Violate Statute	X														X
<b>Enforcement &amp; Liability</b>															
Violations Deemed Unfair & Deceptive Acts & Practices	X														X
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)					X			X			X				
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 (commissioner may obtain declaratory judgment, enjoin person engaging in violation of this	X (fine of \$500 and up to 90 days in jail, per violation, per day of violation)			X (statutory damages of \$10,000)			X (actual damages, statutory damages equal to finance charge plus 10% of amount				

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				law, obtain civil fine of not more than \$10,000 for first offense and \$20,000 for second and subsequent offense; order restitution)							financed, punitive damages for malicious and reckless violation, costs and reasonable attorney fees)				
Corrections and Unintentional Violations				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 of prohibition to make “predatory loan” 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 compliance failure and prior to action)			X (no violation if appropriate restitution within 60 days of discovery)			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 compliance failure and prior to action)				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 compliance failure and prior to action)
Additional Limitations on											X (creditor				

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Foreclosing											must use judicial foreclosure procedure of state where property is located; borrower may assert nonexistence of default or any other defense)					
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.