

BUTERA & ANDREWS

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2002 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 6

01/10/03 version

CONCEPT¹	NHEMA Staff Draft Concepts	Rhode Island HB 8228	South Carolina HB 4614	South Carolina SB 994 / HB 4985	South Carolina HB 5107	Tennessee HB 2400/ SB 2616	Tennessee SJR 599	Utah HB 191	Vermont SB 230	Virginia SJR 111	Washington on SB 6623	Washington on HB 2545 / SB 6525	Washington on SB 6747	Washington on SB 6338	Washington on Reg. RCW 34.05.320
Date of Introduction (i), Current Status, or Date of Enactment (e)		05/30/02 (i) 05/30/02 adopted by HOUSE	01/30/02 (i) dead	SB 994: 02/07/02 (i) dead HB 4985: 04/02/02 (i) dead	04/11/02 (i) dead	HB 2400: 01/17/02 (i) dead SB 2616: 01/17/02 (i) dead	03/13/02 (i) dead	01/21/02 (i) dead	01/10/02 (i) dead	01/09/02 (i) 03/06/02 (e)	01/23/02 (first reading) dead	HB 2545: 01/21/02 (i) dead SB 6525: 01/21/02 (i) dead	01/31/02 (i) dead	01/16/02 (i) 04/03/02 (e)	07/03/02 (i) pending
Summary of Bills Only Related to Predatory Lending		Resolution creating a nine member special house commission to study the acts and practices regarding home loans, and report back to the House of Representatives no later than 5/30/03.	Adding the following provisions to the Code: prohibition of flipping, limitations on points and fees, prohibition of the financing of certain insurance, limitations on pp, etc.	Adding the following provisions to the Code: prohibition of flipping, requirement of certain disclosures, limitations on points and fees, prohibition of the financing of certain insurance, limitations on pp, etc.		Prohibits deliberate and intentional changing or revising fees, payments due, or charges incurred in order to confuse, deceive, or mislead persons regarding contract provisions.	Creates a special joint committee to perform a comprehensive analysis or predatory lending in Tennessee.	Prohibits contractors and real estate brokers from offering financial incentives to a borrower to steer the borrower to used a specific lender to a residential mortgage loan; prohibits brokering of loans which would result in total indebtedness.		Directs the Virginia Housing Study Commission to study certain housing issues.	Creates a task force to study consumer mortgage lending issues.	Prohibits an insurer from offering any form of single premium credit insurance in connection with a residential mortgage loan.		Requires lenders to disclose in writing to borrowers itemized fees, costs, APR, etc.	Makes it an unfair practice to issue or sell single premium credit insurance on connection with residential mortgage loan unless: (1) terms of policy and loan are the same; (2) borrower is given option to buy credit insurance paid with monthly premiums; (3) full refund if policy is cancelled within 60

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																days of loan.
Types of Loans Covered by Act			Applies to loans, other than open-end credit plans or reverse mortgages; loans are equal to or less than conforming loan size limit for single-family dwelling as established by Fannie Mae.	Applies to loans, other than open-end credit plans or reverse mortgages; loans are equal to or less than conforming loan size limit for single-family dwelling as established by Fannie Mae.	Does not apply to reverse mortgage transactions, open-ended credit plans, or loans for the purchase of the borrower's principal dwelling.				Threshold loan excludes loans > \$150,000 or are primarily for business purpose.				Applies to loans, including open-end credit plans, other than reverse mortgages.			
Triggers																
Annual Percentage Rate Trigger (HOEPA = APR > T-bill + 8% for first mortgage lien, or + 10% for junior lien mortgage)	(like HOEPA)				APR > T-bill + 8% for first mortgage lien, or + 10% for junior mortgage lien.				FOR THRESHOLD LOAN: APR > T-bill + 4.5 to 6.5% for first mortgage lien, or + 6.5 to 8% for junior mortgage lien.				APR > 5-year T-bill + 6% for first mortgage lien, or + 8% for junior mortgage lien.			
Points and Fees Trigger	(like HOEPA)				P&f > the				NO P&F				P&f > 3% of			

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(HOEPA = points & fees > greater of 8% of total loan amount or \$480 (for 2002))					greater of 8% of total loan amount or \$480 (to be adjusted annually by changes in CPI)				TRIGGER!				total loan amount for loans => \$30,000, or the lesser of \$900 or 6% 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		

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													lender (and for open-ended loans: total 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 (makes threshold loan or HCL predatory loan)				X		
No Negative Equity															
No Balloons (defined as a scheduled payment that is more than twice as large as the average of earlier	X								X (makes threshold loan or HCL predatory				X		

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scheduled payments) (seasonal/irregular income adjustments typically OK)									loan)						
No Call Provision (Debt Acceleration; Due-On-Demand Clause) (except when repayment accelerated by default)	X												X (any home loan)		
No Advance Payments (if more than 2 period payments are consolidated)	X								X (makes threshold loan or HCL predatory loan)				X		
No Modification or Deferral Fees	X								X (makes threshold loan or HCL predatory loan)				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 (debtor may prepay in full at any time if aggregate of sums advances does not exceed \$150,000)	X (debtor may prepay in full at any time if aggregate of sums advances does not exceed \$150,000)					X (makes threshold loan or HCL predatory loan)				X (no pp after 2 nd year; 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 Increased Interest Rate After Default	X								X (makes threshold loan or HCL predatory				X		

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									loan)						
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 (makes threshold loan or HCL predatory loan)				X		
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan, Dividing Transaction into Separate Parts, or Any Other Subterfuge													X		
No Enforcement if HCL Contract Leaves Blanks to be Filled In															
No Waiver of a Violation of Predatory Lending Bill															
Adjustable Rate Mortgages Must Be Tied to Nationally Recognized Lending Rate															

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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)				X (special disclosure notice must be provided)									X (lender must receive a certification that borrower received counseling)	
No Lending Without Consumer’s Own Attorney															
No Loan “Flipping”			X (any home loan) “Flipping” is defined as: more than 50% of prior debt refinanced bears lower IR; it will take more than 2 years to recoup transaction	X (any home loan) “Flipping” is defined as: more than 50% of prior debt refinanced bears lower IR; it will take more than 2 years to recoup transaction	X (prohibits replacing or consolidating of zero- or low-interest loans (at least T-bill –2%) made by gov’n’t or NGO with HCL within 10 years unless				X (makes threshold loan or HCL predatory loan) “Flipping” is defined as: more than 50% of prior debt refinanced bears lower IR; it will take more				X (any home loan) “Flipping” is presumed if: (1) refinancing in which the primary tangible benefit is a lower interest rate and it will take more		

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			costs; refinancing of special mortgages.	costs; refinancing of special mortgages.	current holder consents in writing)				than 5 years to recoup transaction costs; refinancing of special mortgages.				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.		
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor			X (no permitting consumer to enter into transaction from which consumer derives no substantial benefit)	X (no permitting consumer to enter into transaction from which consumer derives no substantial benefit)	X (no refinancing of HCL within one year into another HCL unless it is in borrower's interest)										
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	X	X (if a pattern or practice => presumption of a violation of this section)				X (generally prohibited for HCL and threshold loans) (presumption borrower can repay if his total				X		

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									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; does not apply to borrowers whose income is greater than 120% of median family income)						
No Recommending or Encouraging Default on Existing Loan			X (any home loans)	X (any home loan)									X (any home loan)		
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value	X (Presumption can repay if monthly payments do														

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	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															
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															
Point & Fee & Financing Limitations															
No Financing of Points & Fees or Other Charges Payable to 3 rd Parties or of			X (no charging p&f in	X (no charging p&f in					X (makes threshold loan or HCL				X		

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Prepayment Fees or Penalties			excess of 4% of total loan amount)	excess of 4% of total loan amount)					predatory loan, if financing of p&f in excess of 4% of total loan amount less amount of such p&f if loan is => \$16,000 or \$800 if loan is < \$16,000)						
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 (any home loan, any consumer credit sale secured by SI in buyer’s dwelling) (and no financing of payments for debt cancellation or suspension agreements)	X (any home loan, any consumer credit sale secured by SI in buyer’s dwelling) (and no financing of payments for debt cancellation or suspension agreements)					X (makes threshold loan or HCL predatory loan)				X (any home loan)		

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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)														
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		

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													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)		
Additional Disclosures															
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard Insurance, Principal/Interest/Mortgage Insurance.				X (estimate of disclosures must be accompanied by itemization of amount financed and must be redisclosed if material term of loan changes)											
Debt Consolidation Loans - Notice At or Prior to Application that Aggregate Amount & Number of Payments May Increase															

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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)															
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 right to cure the default)		
Notice That In Business of 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		
Various Other Restrictions on Home Improvement Lending / Contracting															

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2002 SUMMARY COMPARISON OF MAJOR STATE AND LOCAL “PREDATORY LENDING” LEGISLATION – Part 6

01/10/03 version

CON7CEPT¹	NHEMA Staff Draft Concepts	Rhode Island HB 8228	South Carolina HB 4614	South Carolina SB 994 / HB 4985	South Carolina HB 5107	Tennessee HB 2400/ SB 2616	Tennessee SJR 599	Utah HB 191	Vermont SB 230	Virginia SJR 111	Washington SB 6623	Washington HB 2545 / SB 6525	Washington SB 6747	Washington SB 6338	Washington Reg. RCW 34.05.320
Required Reporting to Credit Bureaus															
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 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 (any home loan)		
Special Affirmative															

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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				X (penalty for nondisclosure only: 2x amount of finance change (but must be not less than \$200 or more than \$2,000, reasonable attorney fees and costs)	X (actual damages sustained as a result of material violation; additional amount not to exceed \$1,000)				X (actual damages, not less than amount of home equity individual lost due to predatory loan)						X (statutory damages (finance change + 10%), punitive damages (if malicious or reckless violation), costs and reasonable attorney fees)
Corrections and Unintentional Violations				X (no violation of disclosure requirements if appropriate restitution within 60 days after discovery of error and					X (no violation of law prohibiting issuance of predatory loans if appropriate restitution within 30 days of loan						X (no violation of law prohibiting issuance of predatory loans if appropriate restitution within 30 days of loan

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				prior to institution of any action)					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)				closing and prior to notice of compliance failure; in case of bona fide error, appropriate restitution must be made within 60 days of loan closing and prior to notice of compliance failure)		
Additional Limitations on Foreclosing													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		

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													violations of this Act)		
If Violation Found, Foreclosure Prohibited, Except by Judicial Order															

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.