

BUTERA & ANDREWS

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

11/14/02 version

CONCEPT¹	West Virginia SB 622	West Virginia SB 542	West Virginia HB 4379
Date of Introduction (i), Current Status, or Date of Enactment (e)	02/18/02 (i) dead	02/07/02 (i) dead	02/04/02 (i) 03/13/02 (e)
Summary of Bills Only Related to Predatory Lending	Provides for the following limitations on certain non-purchase money loans secured by residential real estate: (1) p&f may not exceed 3% of total loan amount; (2) loan may not be made without due regard for repayment ability; and (3) all unearned p&f must be rebated.	Relates to the regulation of mortgage brokers, lenders, services, and loan originators; provides for license fees, revocation, suspension, and renewal of loan originator licenses; amends a continuing legal education requirement for brokers, etc.	Relates to the regulation of mortgage brokers, lenders, services, and loan originators; provides for license fees, revocation, suspension, and renewal of loan originator licenses; amends a continuing legal education requirement for brokers, etc.
Types of Loans Covered by Act			
Triggers			
Annual Percentage Rate Trigger			

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(HOEPA = APR > T-bill + 8% for first mortgage lien, or + 10% for junior lien mortgage)			
Points and Fees Trigger (HOEPA = points & fees > greater of 8% of total loan amount or \$480 (for 2002))			
Other Triggers			
Restrictions on Loan Terms			
No Negative Amortization			
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)			
No Call Provision (Debt Acceleration; Due-On-Demand Clause) (except when repayment accelerated by default)			
No Advance Payments (if more than 2 period payments are consolidated)			
No Modification or Deferral Fees			
No (or Very Limited) Prepayment Fees or Penalties			
No Increased Interest Rate After Default			
No Mandatory Arbitration Limiting Judicial Relief			

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No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan, Dividing Transaction into Separate Parts, or Any Other Subterfuge			
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			
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			
No Lending Without Consumer’s Own Attorney			
No Loan “Flipping”			
No Refinancing if No Reasonable, Tangible Net Benefit to Obligor			
No Steering			
No Lending Without Due Regard for Repayment Ability (HOEPA applies only in “pattern & practice” cases)			

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No Recommending or Encouraging Default on Existing Loan			
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value			
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 Prepayment Fees or Penalties			

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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)			
Limit Broker Fees and/or Total Charges			
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			
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 Balance			
Additional Disclosures			
Exact Monthly Payments: Mortgage Insurance, Real Estate Taxes, Hazard Insurance, Principal/Interest/Mortgage Insurance.			
Debt Consolidation Loans -			

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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)			
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			
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			
Various Other Restrictions on Home Improvement Lending / Contracting			

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Required Reporting to Credit Bureaus			
Additional Governmental Reporting Requirements			
Broker's Duties			
Lender May Not Make Investments Backed By Loans That Violate Statute			
Enforcement & Liability			
Violations Deemed Unfair & Deceptive Acts & Practices			
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)			
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			
Corrections and Unintentional Violations			
Additional Limitations on Foreclosing			
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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