



**SUMMARY COMPARISON OF MAJOR 2000 STATE “PREDATORY LENDING” LEGISLATION**

(Bills described as originally introduced)

<b>CONCEPT<sup>i</sup></b>	<b>California SB 2128</b>	<b>North Carolina Session Law 1999-332</b>	<b>South Carolina SB 996</b>	<b>Missouri SB 786</b>	<b>Illinois HB 3007</b>	<b>New York Proposed Regulation</b>	<b>New York AF 4744-B</b>	<b>Minnesota H.F. 2866</b>	<b>Maryland H.B. 1196</b>
<b>Expand or Change Key HOEPA (a/k/a Section 32) “Trigger” Definitions<sup>ii</sup></b>						[includes open-end lines of credit but not reverse mortgages]			
<b>Annual Percentage Rate Trigger (HOEPA = APR &gt; T-bill + 10%)</b>	X (APR > T-bill + 5%, or if variable, reasonably expected to exceed this, or rate changes not per standard market index)	(like HOEPA)	(like HOEPA)	X (APR > T-bill + 5%, or if variable, reasonably expected to exceed this, or rate changes not per standard market index)	X (APR > T-bill + 6%)	X (APR > T-bill + 8% for first lien or 9% for junior lien)		X (APR > T-bill + 5%, or if variable, reasonably expected to exceed this, or rate changes not per standard market index)	X (APR > T-bill + 5%, or if variable, reasonably expected to exceed this, or rate changes not per standard market index)
<b>Change Point &amp; Fee Definitions or Include More/Different Items in Than HOEPA so Trigger May Be Reached More Often (HOEPA = points &amp; fees &gt; greater of 8% of total loan amount or \$451)</b>	X (points & fees > 3% of total loan amount if it is at least \$20,000, or 4% of it is purchase \$ guaranteed by FHA/VA & > \$20,000, of lesser of 5% or \$800 if it's < \$20,000) (include broker fees; can exclude certain bona fide discount points)	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; can exclude certain bona fide discount points)	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; can exclude certain bona fide discount points)	X (points & fees > 3% of total loan amount if it is at least \$20,000, or 4% of it is purchase \$ guaranteed by FHA/VA & > \$20,000, of lesser of 5% or \$800 if it's < \$20,000) (include broker fees; can exclude certain bona fide discount points)	X (includes broker fees)	X (points & fees > 5% of total loan amount, not counting 3% of qualifying bona fide discount points) (include broker fees)		X (points & fees > 3% of total loan amount if it is at least \$20,000, or 4% of it is purchase \$ guaranteed by FHA/VA & > \$20,000, of lesser of 5% or \$800 if it's < \$20,000) (include broker fees; can exclude certain bona fide discount points)	X (points & fees > 3% of total loan amount if it is at least \$20,000, or 4% of it is purchase \$ guaranteed by FHA/VA & > \$20,000, of lesser of 5% or \$800 if it's < \$20,000) (include broker fees; can exclude certain bona fide discount points)



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<b>Restrictions on Loan Terms</b>									
No Negative Amortization	X (any loan)	X	X	X	X	X		X (any loan)	X (any loan)
No Balloons (seasonal/irregular income adjustments typically OK)	X	X	X	X	X	X (except over 7 yrs. & purchase \$ bridge loans)	X (any loan)	X	X
No Call Provision (Debt Acceleration)	X	X	X	X (no provision letting lender in its sole discretion increase the indebtedness)	X	X		X	X
No Advance Payments	X	X	X	X	X	X		X	X
No Modification or Deferral Fees	X	X	X	X	X	X		X	X
No (or Very Limited) Prepayment Fees or Penalties	X (any loan)	X (no penalty on any 1 <sup>st</sup> mortgage of \$150,000 or less; but, no limitation if preempted by federal law) (any loan)	X (no penalty on any 1 <sup>st</sup> mortgage of \$150,000 or less; but, no limitation if preempted by federal law) (any loan)	X	X (any loan)	X (only prohibits financing if it’s refinancing of high cost loan (HCL) of same lender or affiliate)		X (any loan)	X (any loan)
No Increased Interest Rate After Default	X	X	X	X	X	X		X	X
No Mandatory Arbitration Limiting Judicial	X			X	X	X (No “Oppressive”)		X	X



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Relief									
No Bad Faith Avoidance of Restrictions as by Structuring as Open-End Credit Plan	X	X	X	X	X			X	X
No Enforcement if HCL Contract Leaves Blanks to be Filled In	X (any loan)			X				X (any loan)	X (any loan)
<b>Limitation on Sales &amp; Marketing</b>									
No Lending Without Prior Credit Counseling	X	X	X	X	X	X (only requires disclosure that borrower should consider)		X	X
No Lending Without Consumer’s Own Attorney					X				
No Loan “Flipping”	X (any loan)	X (any loan)	X (any loan)	X (any loan)	X (any loan)	X (no “unconscionable” refinancing)		X (any loan)	X (any loan)
No Lending Without Due Regard for Repayment Ability (HOEPA)	X (Presumption can repay if monthly payments do not exceed 50% of	X (Presumption can repay if monthly payments do not exceed 50% of	X (Presumption can repay if monthly payments do not exceed 50% of	X	X (any loan) (Presumption can repay if monthly payments do not exceed 45% of	X (Presumption can repay if monthly payments do not exceed 50% of gross monthly income)	X (any loan) (affirmative defense)	X (any loan)	X (any loan)



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applies only in “pattern & practice” cases)	gross monthly income, no presumption of inability solely by exceeding 50%) (any loan)	gross monthly income, no presumption of inability solely by exceeding 50%)	gross monthly income, no presumption of inability solely by exceeding 50%)		gross monthly income)				
No Recommending or Encouraging Default on Existing Loan	X (any loan)	X (any loan)	X (any loan)	X (any loan)	X (any loan)	X		X (any loan)	X (any loan)
No Compensating, Coercing or Intimidating Appraiser to Influence Judgment on Property Value	X (any loan)			X (any loan)				X (any loan) (current law)	X (any loan)
No Making or Causing to Make Any False, Deceptive or Misleading Statement or Representation	X (any loan)			X (any loan)				X (any loan) (current law)	
No Lending if loan + other liens exceed 80% of Property Value							X (any loan)		
<b>Point &amp; Fee &amp; Financing Limitations</b>									
No Financing of Points & Fees or Other Charges	X	X	X			X (No Required Financing of Points & Fees and No			



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Payable to 3 <sup>rd</sup> Parties or of Prepayment Fees or Penalties						Financing Exceeding 5% of Total Loan Amount on Non- Refinancings (with certain exceptions) and No Financing Exceeding 5% of Additional Proceeds Received on Refinancings)			
No Points & Fees if HCL Refinances Lender’s or Affiliate’s HCL	X	X	X		X (unless APR reduced at least 2%)	X (if refinance within 2 years, except as to additional proceeds over & above the amount of the existing HCL; unclear if broker involved)			
No Financing of Credit Insurance (except monthly premium)	X (any loan)	X (any loan)	X (any loan)	X (any loan)	X (any loan)	X (But OK if give required disclosure 3 days before closing)		X (any loan)	X (any loan)
Limit Broker Fees and/or Total Charges		X (points & fees charged or received by lender limited to 1%, but can be 2% in some junior liens) (1 <sup>st</sup> loans < \$300,000)	X (points & fees charged or received by lender limited to 1%, but can be 2% in some junior liens) (1 <sup>st</sup> loans < \$300,000)		X (any loan) (charges limited to 3% of total loan amount)		X (any loan) (broker fees limited to 3% of loan and total charges to 6% with certain exceptions)		
No Charging Fee Where Product or	X (any loan)	X (no “unreasonable		X (any loan)				X (any loan) (current law)	



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Service Not Actually Provided & No Misrepresenting Amount Charged By or Paid to 3 <sup>rd</sup> Party for Product or Service		compensation”, or compensation for which no or only nominal services performed							
<b>Additional Disclosures</b>									
Debt Consolidation Loans - Notice At or Prior to Application that Aggregate Amount & Number of Payments May Increase						X			
Notice at Application that Loan Not Necessarily Least Expensive & Should Shop Around						X			
Translate Certain Loan Documents into Language Other Than English (if another language used during discussions)	X (any loan)			X (any loan)					
Notice At or Before							X (any loan)		



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Application Whether Loan Will Be Sold & If So, To Whom (or Can Not Sell loan for 180 Days)									
Additional Notices When Foreclosing							X (any loan)		
<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	X	X (payable to borrower or at option to escrow agent)	X	X	X	X
Various Other Restrictions on Home Improvement Lending / Contracting							X		
Required Reporting to Credit Bureaus						X			
Additional Governmental Reporting Requirements	X (Extend HMDA-type reporting & report average & median interest rates on loans by census tract,			X (Extend HMDA-type reporting & report average & median interest rates on loans by census tract,		X (Annual Reporting of top 3 Referrals for HI Contractors, Consultants & Attorneys)			X (Extend HMDA- type reporting & report average & median interest rates on loans by census tract, racial characteristics,



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	racial characteristics, gender, etc.)			racial characteristics, gender, etc.)					gender, etc.)
Broker Deemed to be Lender’s Agent							X		
Lender May Not Make Investments Backed By Loans That Violate Statute	X			X					X
<b>Enforcement &amp; Liability</b>									
Violations Deemed Unfair & Deceptive Acts & Practices		X	X		X	X ( unfair practice if charge over usual and customary charge for comparable customer or if no reasonable capacity to repay)			
Subsequent Purchasers or Assignees Liable on All Claims (e.g. Secondary Market)					X (any loan)				
Special Affirmative Pleading Requirements for Lenders & Various Affirmative Defenses for Borrowers							X		
Substantial	X (e.g., forfeiture)			X (e.g., forfeiture)	X (Can recover)			X (e.g., forfeiture of	X (e.g., forfeiture



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Monetary Penalties	of all principal & interest)			of all principal & interest)	greater of twice total of all interest, discount and charges under contract or paid by borrower plus attorneys fees & court costs) (mandatory withdrawal of license for violations)			all principal & interest)	of all principal & interest)
Limited Right to Cure, etc.	X	X	X	X	X			X	X

<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. 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. In particular, West Virginia has proposals that are not included in this chart because we understand that the current bill is being fundamentally changed. The West Virginia legislation (S.B. 392) may be included in a subsequent version of this document.

<sup>ii</sup> Although not expressly noted in the text of this chart, the reader should be aware that many of the state proposals often fail to define key terms or to do so adequately.