



House of Representatives

General Assembly

File No. 99

January Session, 2001

Substitute House Bill No. 6131

House of Representatives, April 2, 2001

The Committee on Banks reported through REP. DOYLE of the 28th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING ABUSIVE HOME LOAN LENDING PRACTICES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-3 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 Other definitions applying to this title or to specified parts thereof
4 and the sections in which they appear are:

5 "Account". Sections 36a-155 and 36a-365.

6 "Additional proceeds". Section 7 of this act.

7 "Advance fee". Sections 36a-510, 36a-485 and 36a-615.

8 "Advertise" or "advertisement". Sections 36a-485 and 36a-510.

9 "Agency bank". Section 36a-285.

- 10 "Alternative mortgage loan". Section 36a-265.
- 11 "Amount financed". Section 36a-690.
- 12 "Annual percentage rate". Section 36a-690.
- 13 "Annual percentage yield". Section 36a-316.
- 14 "Applicant". Section 36a-736.
- 15 "APR". Section 3 of this act.
- 16 "Associate". Section 36a-184.
- 17 "Bank". Section 36a-30.
- 18 "Bankers' bank". Section 36a-70.
- 19 "Banking business". Section 36a-425.
- 20 "Billing cycle". Section 36a-565.
- 21 "Bona fide nonprofit organization". Section 36a-655.
- 22 "Branch". Sections 36a-145 and 36a-410.
- 23 "Branch or agency net payment entitlement". Section 36a-428n.
- 24 "Branch or agency net payment obligation". Section 36a-428n.
- 25 "Broker". Section 36a-510 and section 3 of this act.
- 26 "Business and industrial development corporation". Section 36a-626.
- 27 "Business and property in this state". Section 36a-428n.
- 28 "Cash advance". Section 36a-564.
- 29 "Cash price". Section 36a-770.

- 30 "Certificate of organization". Section 36a-435.
- 31 "Closely related activities". Section 36a-250.
- 32 "Collective managing agency account". Section 36a-365.
- 33 "Commercial vehicle". Section 36a-770.
- 34 "Community bank". Section 36a-70.
- 35 "Community development bank". Section 36a-70.
- 36 "Connecticut holding company". Section 36a-410.
- 37 "Consumer". Sections 36a-155, 36a-676 and 36a-695.
- 38 "Consumer Credit Protection Act". Section 36a-676.
- 39 "Consumer debtor" and "debtor". Sections 36a-645 and 36a-800.
- 40 "Consumer collection agency". Section 36a-800.
- 41 "Consummation". Section 3 of this act.
- 42 "Controlling interest". Section 36a-276.
- 43 "Credit". Sections 36a-645 and 36a-676.
- 44 "Creditor". Sections 36a-676, 36a-695 and 36a-800.
- 45 "Credit card", "cardholder" and "card issuer". Section 36a-676.
- 46 "Credit clinic". Section 36a-695.
- 47 "Credit rating agency". Section 36a-695.
- 48 "Credit report". Section 36a-695.
- 49 "Credit sale". Section 36a-676.

- 50 "De novo branch". Section 36a-410.
- 51 "Debt". Section 36a-645.
- 52 "Debt adjustment". Section 36a-655.
- 53 "Debt mutual fund". Section 36a-275.
- 54 "Debt securities". Section 36a-275.
- 55 "Deliver". Section 36a-316.
- 56 "Deposit". Section 36a-316.
- 57 "Deposit account". Sections 36a-136 and 36a-316.
- 58 "Deposit account charge". Section 36a-316.
- 59 "Deposit account disclosures". Section 36a-316.
- 60 "Deposit contract". Section 36a-316.
- 61 "Deposit services". Section 36a-425.
- 62 "Depositor". Section 36a-316.
- 63 "Earning period". Section 36a-316.
- 64 "Electronic payment instrument". Section 36a-596.
- 65 "Eligible account holder". Section 36a-136.
- 66 "Eligible collateral". Section 36a-330.
- 67 "Equity mutual fund". Section 36a-276.
- 68 "Federal Home Mortgage Disclosure Act". Section 36a-736.
- 69 "Fiduciary". Section 36a-365.

- 70 "Filing fee". Section 36a-770.
- 71 "Finance charge". Sections 36a-690 and 36a-770.
- 72 "Financial institution". Sections 36a-41, 36a-155, 36a-316, 36a-330 and
73 36a-736.
- 74 "Financial records". Section 36a-41.
- 75 "First mortgage loan". Sections 36a-485, 36a-705 and 36a-715.
- 76 "Fiscal year". Section 36a-435.
- 77 "Foreign banking corporation". Section 36a-425.
- 78 "General facility". Section 36a-580.
- 79 "Global net payment entitlement". Section 36a-428n.
- 80 "Global net payment obligation". Section 36a-428n.
- 81 "Goods". Sections 36a-535 and 36a-770.
- 82 "Graduated payment mortgage loan". Section 36a-265.
- 83 "Guardian". Section 36a-365.
- 84 "High cost home loan". Section 3 of this act.
- 85 "Holder". Section 36a-596.
- 86 "Home banking services". Section 36a-170.
- 87 "Home banking terminal". Section 36a-170.
- 88 "Home improvement loan". Section 36a-736.
- 89 "Home purchase loan". Section 36a-736.
- 90 "Home state". Section 36a-410.

- 91 "Immediate family". Section 36a-435.
- 92 "Installment loan contract". Sections 36a-535 and 36a-770.
- 93 "Instrument". Section 36a-596.
- 94 "Insurance bank". Section 36a-285.
- 95 "Insurance department". Section 36a-285.
- 96 "Interest". Section 36a-316.
- 97 "Interest rate". Section 36a-316.
- 98 "Lender". Sections 36a-510, [and] 36a-770 and section 3 of this act.
- 99 "Lessor". Section 36a-676.
- 100 "License". Section 36a-626.
- 101 "Licensee". Sections 36a-510, 36a-596 and 36a-626.
- 102 "Limited branch". Section 36a-145.
- 103 "Limited facility". Section 36a-580.
- 104 "Loan broker". Section 36a-615.
- 105 "Loss". Section 36a-330.
- 106 "Made in this state". Section 36a-770.
- 107 "Managing agent". Section 36a-365.
- 108 "Member". Section 36a-435.
- 109 "Membership share". Section 36a-435.
- 110 "Money order". Section 36a-596.

- 111 "Mortgage broker". Section 36a-485.
- 112 "Mortgage insurance". Section 36a-725.
- 113 "Mortgage lender". Sections 36a-485 and 36a-705.
- 114 "Mortgage loan". Sections 36a-261 and 36a-265.
- 115 "Mortgage rate lock-in". Section 36a-705.
- 116 "Mortgage servicing company". Section 36a-715.
- 117 "Mortgagor". Section 36a-715.
- 118 "Motor vehicle". Section 36a-770.
- 119 "Multiple common bond membership". Section 36a-435.
- 120 "Municipality". Section 36a-800.
- 121 "Net worth". Section 36a-596.
- 122 "Network". Section 36a-155.
- 123 "Note account". Sections 36a-301 and 36a-445.
- 124 "Office". Section 36a-316.
- 125 "Open-end credit plan". Section 36a-676.
- 126 "Open-end loan". Section 36a-565.
- 127 "Organization". Section 36a-800.
- 128 "Out-of-state holding company". Section 36a-410.
- 129 "Outstanding". Section 36a-596.
- 130 "Passbook savings account". Section 36a-316.

- 131 "Periodic statement". Section 36a-316.
- 132 "Permissible investment". Section 36a-596.
- 133 "Person". Section 36a-184.
- 134 "Post". Section 36a-316.
- 135 "Prepaid finance charge". Section 3 of this act.
- 136 "Prepayment penalty". Section 3 of this act.
- 137 "Prime quality". Section 36a-596.
- 138 "Principal amount of the loan". Section 36a-510.
- 139 "Principal officer". Section 36a-485.
- 140 "Processor". Section 36a-155.
- 141 "Public deposit". Section 36a-330.
- 142 "Purchaser". Section 36a-596.
- 143 "Qualified financial contract". Section 36a-428n.
- 144 "Qualified public depository" and "depository". Section 36a-330.
- 145 "Records". Section 36a-17.
- 146 "Relocate". Section 36a-145.
- 147 "Residential property". Section 36a-485.
- 148 "Retail buyer". Sections 36a-535 and 36a-770.
- 149 "Retail credit transaction". Section 42-100b.
- 150 "Retail deposits". Section 36a-70.

- 151 "Retail installment contract". Sections 36a-535 and 36a-770.
- 152 "Retail installment sale". Sections 36a-535 and 36a-770.
- 153 "Retail seller". Sections 36a-535 and 36a-770.
- 154 "Reverse annuity mortgage loan". Section 36a-265.
- 155 "Sales finance company". Sections 36a-535 and 36a-770.
- 156 "Savings department". Section 36a-285.
- 157 "Savings deposit". Section 36a-316.
- 158 "Secondary mortgage loan". Section 36a-510.
- 159 "Security convertible into a voting security". Section 36a-184.
- 160 "Share". Section 36a-435.
- 161 "Simulated check". Sections 36a-485 and 36a-510.
- 162 "Single common bond membership". Section 36a-435.
- 163 "Social purpose investment". Section 36a-277.
- 164 "Standard mortgage loan". Section 36a-265.
- 165 "Tax and loan account". Sections 36a-301 and 36a-445.
- 166 "The Savings Bank Life Insurance Company". Section 36a-285.
- 167 "Time account". Section 36a-316.
- 168 "Transaction". Section 36a-215.
- 169 "Travelers check". Section 36a-596.
- 170 "Troubled financial institution". Section 36a-215.

171 "Uninsured bank". Section 36a-70.

172 "Unsecured loan". Section 36a-615.

173 Sec. 2. (NEW) Sections 2 to 9, inclusive, of this act shall be known
174 and may be cited as the "Connecticut Abusive Home Loan Lending
175 Practices Act".

176 Sec. 3. (NEW) As used in sections 3 to 9, inclusive, of this act:

177 (1) "APR" means the annual percentage rate for the loan calculated
178 according to the provisions of the federal Truth-in-Lending Act, 15
179 USC Section 1601 et seq., as from time to time amended, and the
180 regulations promulgated thereunder. For open-end lines of credit,
181 "APR" means the highest corresponding annual percentage rate
182 required to be disclosed under 12 CFR Sections 226.6(a)(2) and
183 226.14(b), as from time to time amended, excluding any maximum
184 rates required to be disclosed or stated pursuant to 12 CFR Sections
185 226.6(a)(2) or 226.30, as from time to time amended. For closed-end
186 loans, "APR" means the annual percentage rate required to be
187 disclosed under 12 CFR Section 226.18(e), as from time to time
188 amended, excluding any maximum rates required to be disclosed or
189 stated pursuant to 12 CFR Sections 226.18(f) or 226.30, as from time to
190 time amended. For purposes of this subdivision, any variable rate
191 calculation shall use an index value in effect within forty-five days
192 prior to consummation;

193 (2) "Broker" means a person who, for a fee, commission or other
194 valuable consideration, negotiates, solicits, arranges, places or finds a
195 high cost home loan that is to be made by a lender;

196 (3) "Consummation" means the time that a borrower becomes
197 contractually obligated on a high cost home loan;

198 (4) "High cost home loan" means any loan or extension of credit,
199 including an open-end line of credit but excluding a reverse mortgage

200 transaction, as defined in 12 CFR Section 226.33, as from time to time
201 amended:

202 (A) In which the borrower is a natural person;

203 (B) The proceeds of which are to be used primarily for personal,
204 family or household purposes;

205 (C) In which the loan is secured by a mortgage upon any interest in
206 one-to-four family residential real property located in this state which
207 is, or, when the loan is made, is intended to be occupied by the
208 borrower as a principal residence; and

209 (D) In which the APR at consummation will exceed the yield on
210 Treasury securities having comparable periods of maturity to the loan
211 maturity as of the fifteenth day of the month immediately preceding
212 the month in which the application for the loan or extension of credit is
213 received by the lender, by more than the number of percentage points
214 specified in 12 CFR 226.32(a)(1)(i), as from time to time amended;

215 (5) "Lender" means any person who originates one or more high
216 cost home loans;

217 (6) "Prepaid finance charge" means any charge imposed as an
218 incident to or a condition of the loan or extension of credit payable by
219 the borrower at or before the closing of the transaction, including, but
220 not limited to, loan fees, points, commissions, broker's fees or
221 commissions, transaction fees or similar finance charges determined in
222 accordance with sections 36a-675 to 36a-685, inclusive, of the general
223 statutes and regulations adopted thereunder, or any fees or
224 commissions payable to the lender or broker in connection with the
225 sale of credit life, accident, health, disability or unemployment
226 insurance products or unrelated goods or services sold in conjunction
227 with the loan or extension of credit when the cost of such insurance
228 products or goods or services is prepaid with the proceeds of the loan

229 or extension of credit and financed as part of the principal amount of
230 the loan or extension of credit, but excluding the time-price
231 differential, as such term is used in 12 CFR 226.32;

232 (7) "Prepayment penalty" means any charge or penalty for paying
233 all or part of the principal before the date on which the principal is due
234 and includes computing a refund of unearned interest by a method
235 that is less favorable to the borrower than the actuarial method, as
236 defined by Section 933(d) of the Housing and Community
237 Development Act of 1992, 15 USC 1615(d), as from time to time
238 amended.

239 Sec. 4. (NEW) A lender making a high cost home loan shall disclose
240 to the prospective borrower:

241 (1) The following statement: "You are not required to complete this
242 agreement merely because you have received these disclosures or have
243 signed a loan application. If you obtain this loan, the lender will have a
244 mortgage on your home. You could lose your home, and any money
245 you have put into it, if you do not meet your obligations under the
246 loan";

247 (2) The APR;

248 (3) The amount of the regular monthly or other periodic payment;
249 and

250 (4) For variable-rate transactions, a statement that the interest rate
251 and monthly payment may increase, and the amount of the single
252 maximum monthly payment, based on the maximum interest rate that
253 may be imposed during the term of the loan.

254 Sec. 5. (NEW) A high cost home loan shall not provide for or include
255 the following:

256 (1) For a loan with a term of less than seven years, a payment

257 schedule with regular periodic payments that when aggregated do not
258 fully amortize the outstanding principal balance, except that this
259 limitation does not apply to a loan with maturities of less than one
260 year if the purpose of the loan is a bridge loan, as used in 12 CFR
261 226.32, connected with the acquisition or construction of a dwelling
262 intended to become the borrower's principal dwelling;

263 (2) A payment schedule with regular periodic payments that cause
264 the principal balance to increase;

265 (3) A payment schedule that consolidates more than two periodic
266 payments and pays them in advance from the proceeds;

267 (4) An increase in the interest rate after default or default charges in
268 excess of five per cent of the amount in default;

269 (5) A refund calculated by a method less favorable than the actuarial
270 method, as defined by Section 933(d) of the Housing and Community
271 Development Act of 1992, 15 USC 1615(d), as from time to time
272 amended, for rebates of interest arising from a loan acceleration due to
273 default;

274 (6) A prepayment penalty except as allowed by this subdivision. A
275 high cost home loan may provide for or include a prepayment penalty,
276 including a refund calculated according to the rule of 78s, as such term
277 is used in 12 CFR 226.32, if:

278 (A) The penalty can be exercised only for the first three years
279 following consummation. No prepayment penalty shall exceed three
280 per cent of the balance prepaid for any payment occurring earlier than
281 one year after consummation of the loan, two per cent of the balance
282 prepaid for any payment occurring between one and two years after
283 consummation of the loan, and one per cent of the balance prepaid for
284 any payment occurring between two and three years after
285 consummation of the loan;

286 (B) The source of the prepayment funds is not a refinancing by the
287 lender or an affiliate of the lender; and

288 (C) At consummation, the borrower's total monthly debts, including
289 amounts owed under the high cost home loan, do not exceed fifty per
290 cent of the borrower's monthly gross income, as verified by the
291 borrower's signed financial statement, a credit report and payment
292 records for employment income;

293 (7) A mandatory arbitration clause or a waiver of participation in a
294 class action; or

295 (8) A call provision that permits the lender, in its sole discretion, to
296 accelerate the indebtedness. This prohibition shall not apply when
297 repayment of the loan is accelerated by bona fide default, pursuant to a
298 due-on-sale clause provision, or pursuant to another provision of the
299 loan agreement unrelated to the payment schedule including, but not
300 limited to, bankruptcy or receivership.

301 Sec. 6. (NEW) Any lender who makes a high cost home loan shall
302 report both the favorable and unfavorable payment history of the
303 borrower to a nationally recognized consumer credit reporting agency
304 at least annually during such period as the lender holds or services the
305 loan.

306 Sec. 7. (NEW) In the making of a high cost home loan no lender
307 shall:

308 (1) Pay a contractor under a home improvement contract from the
309 proceeds of the loan, other than:

310 (A) By an instrument payable to the borrower or jointly to the
311 borrower and the contractor; or

312 (B) At the election of the borrower, through a third-party escrow
313 agent in accordance with terms established in a written agreement

314 signed by the borrower, the lender and the contractor prior to the
315 disbursement;

316 (2) Sell or otherwise assign such loan without furnishing the
317 following statement to the purchaser or assignee: "Notice: This is a
318 loan subject to special rules under the Connecticut Abusive Home
319 Loan Lending Practices Act. Purchasers or assignees of this loan could
320 be liable for all claims and defenses with respect to the loan that the
321 borrower could assert against the lender";

322 (3) Charge, impose or cause to be paid, directly or indirectly,
323 prepaid finance charges that exceed in the aggregate, the greater of five
324 per cent of the principal amount of the loan or two thousand dollars. If
325 the proceeds of a high cost home loan are used to refinance an existing
326 loan, the aggregate of the prepaid finance charges for the current
327 refinancing and any previous high cost home loan financings or
328 financings subject to the provisions of section 13 of this act, by the
329 same lender or affiliate of the same lender within two years of the
330 current refinancing shall not exceed the greater of five per cent of the
331 principal amount of the initial loan, or two thousand dollars. The
332 provisions of this subdivision do not prohibit a lender from charging,
333 imposing or causing to be paid, directly or indirectly, prepaid finance
334 charges in addition to those permitted by this subdivision in
335 connection with any additional proceeds received by the borrower in
336 the refinancing, provided such prepaid finance charges on the
337 additional proceeds shall not exceed five per cent of the additional
338 proceeds. For purposes of this subdivision, "additional proceeds"
339 means: (A) For a closed-end loan, the amount by which the new loan
340 exceeds the current principal balance of the existing loan, and (B) for
341 an open-end loan, the amount by which the line of credit on the new
342 loan exceeds the maximum credit limit of the existing loan;

343 (4) Charge a borrower any fees to modify, renew, extend or amend a
344 high cost home loan or defer any payment due under a high cost home

345 loan, if after the modification, renewal, extension or amendment, the
346 loan is still a high cost home loan, or if no longer a high cost home
347 loan, the APR has not been reduced by at least two percentage points.
348 For purposes of this subdivision, "fees" does not include interest that is
349 otherwise payable and consistent with the provisions of the loan
350 documents. The provisions of this subdivision do not prohibit a lender
351 from charging, imposing or causing to be paid, directly or indirectly,
352 prepaid finance charges in connection with any additional proceeds, as
353 defined in subdivision (3) of this section, received by the borrower in
354 connection with the modification, renewal, extension or amendment,
355 provided the prepaid finance charges on the additional proceeds do
356 not exceed five per cent of the additional proceeds. The provisions of
357 this subdivision do not apply if the existing high cost home loan is
358 sixty or more days delinquent and the modification, renewal,
359 extension, amendment or deferral is part of a work-out process;

360 (5) Make such loan unless the lender reasonably believes at the time
361 the loan is consummated that the borrower will be able to make the
362 scheduled payments to repay the loan based upon a consideration of
363 the borrower's current and expected income, current obligations,
364 employment status, and other financial resources, excluding the
365 borrower's equity in the dwelling that secures repayment of the loan.
366 The borrower shall be presumed to be able to make the scheduled
367 payments to repay the loan if at the time the loan is consummated, or
368 at the time of the first rate adjustment in the case of a lower
369 introductory interest rate, the borrower's monthly debts, including
370 amounts owed under the mortgage, do not exceed fifty per cent of the
371 borrower's monthly gross income, as verified by the borrower's signed
372 financial statement, a credit report, and payment records for
373 employment income;

374 (6) Advertise that refinancing preexisting debt with a high cost
375 home loan will reduce a borrower's aggregate monthly debt payment
376 without also disclosing that the high cost home loan may increase both

377 the borrower's aggregate number of monthly debt payments and the
378 aggregate amount paid by the borrower over the term of the high cost
379 home loan;

380 (7) Recommend or encourage default or further default by a
381 borrower on an existing loan or other debt, prior to the closing of a
382 high cost home loan that refinances all or any portion of such existing
383 loan or debt;

384 (8) Make such loan to a borrower that refinances an existing loan
385 unless the high cost home loan provides a benefit to the borrower
386 considering all of the circumstances, including the terms of both the
387 new and refinanced loans, the cost of the new loan, and the borrower's
388 circumstances;

389 (9) Make such loan with an interest rate that is unconscionable. A
390 lender shall base the interest rate for a high cost home loan on proper
391 and reasonable factors including, but not limited to, creditworthiness,
392 other risk related standards and sound underwriting. For purposes of
393 this subdivision, an interest rate that is not based on such factors, or
394 that significantly deviates from industry standards for making that
395 type of high cost home loan, shall be deemed unconscionable; and

396 (10) Charge and retain fees paid by the borrower for services that
397 are not actually performed, or which are not bona fide and reasonable.

398 Sec. 8. (NEW) (a) Commencing January 1, 2002, any lender that
399 makes a high cost home loan to a borrower and offers such borrower
400 the option to purchase an individual or group credit life, accident,
401 health, disability or unemployment insurance product on a prepaid
402 single premium basis shall also offer such borrower the option of
403 purchasing such insurance product on a monthly premium basis.

404 (b) If a borrower purchases from a lender an individual or group
405 credit life, accident, health, disability or unemployment insurance

406 product, such borrower shall have the right to cancel such insurance
407 product at any time and receive a refund of any unearned premiums
408 paid. Notice of the right to cancel shall be sent by mail to such
409 borrower by the lender no earlier than ten days and no later than thirty
410 days after consummation. Such notice shall also disclose the type of
411 insurance product purchased, the cost of such product and the
412 procedure for canceling such product.

413 Sec. 9. (NEW) The lender and any assignee of the lender shall have
414 the obligation, jointly and severally, to refund or credit the borrower
415 for any default charges, prepayment penalties or prepaid finance
416 charges collected in excess of the limits set forth in sections 5 and 7 of
417 this act.

418 Sec. 10. Subdivision (2) of subsection (a) of section 36a-50 of the
419 general statutes is repealed and the following is substituted in lieu
420 thereof:

421 (2) If a hearing is requested within the time specified in the notice,
422 the commissioner shall hold a hearing upon the matters asserted in the
423 notice unless such person fails to appear at the hearing. After the
424 hearing, if the commissioner finds that the person has violated any
425 such provision, regulation, rule or order, the commissioner may, in the
426 commissioner's discretion and in addition to any other remedy
427 authorized by law, order that a civil penalty not exceeding seven
428 thousand five hundred dollars per violation be imposed upon such
429 person, except that in the case of a violation of sections 4 to 9,
430 inclusive, of this act, the commissioner may order that a civil penalty
431 not exceeding fifteen thousand dollars per violation be imposed upon
432 such person. If such person does not request a hearing within the time
433 specified in the notice or fails to appear at the hearing, the
434 commissioner may, as the facts require, order that a civil penalty not
435 exceeding seven thousand five hundred dollars per violation be
436 imposed upon such person, except that in the case of a violation of

437 sections 4 to 9, inclusive, of this act, the commissioner may order that a
438 civil penalty, not exceeding fifteen thousand dollars per violation, be
439 imposed upon such person.

440 Sec. 11. Subsection (c) of section 36a-53 of the general statutes is
441 repealed and the following is substituted in lieu thereof:

442 (c) (1) Whenever the commissioner finds as the result of an
443 investigation that any such officer, director, Connecticut bank or
444 Connecticut credit union has (A) violated any provision of the general
445 statutes within the jurisdiction of the commissioner, or any regulation,
446 rule or order adopted or issued thereunder, or any condition imposed
447 in writing by the commissioner, (B) breached any written agreement
448 with the commissioner, (C) engaged or participated in any unsafe or
449 unsound practice, or (D) used such officer's or director's official
450 position in a manner contrary to the interest of any bank, Connecticut
451 credit union or federal credit union or its depositors or members, the
452 commissioner may send notice to and take action against such officer,
453 director, Connecticut bank or Connecticut credit union regarding the
454 violation, breach, unsafe or unsound practice, or misuse of official
455 position in accordance with section 36a-50, as amended by this act.
456 Any finding made by the commissioner pursuant to this subdivision
457 shall be considered a violation of this subsection for purposes of
458 section 36a-50, as amended by this act.

459 (2) Notwithstanding the provisions of section 36a-50, as amended
460 by this act, unless the violation, breach, unsafe or unsound practice, or
461 misuse of official position found to have occurred pursuant to this
462 subsection and section 36a-50, as amended by this act, is such that it
463 (A) is part of a pattern of misconduct, (B) has caused or is likely to
464 cause a loss other than a de minimis loss to any bank, Connecticut
465 credit union or federal credit union, (C) will result or has resulted in a
466 pecuniary gain to an officer or director of any Connecticut bank or
467 Connecticut credit union, or (D) is a violation of section 36a-53a or

468 sections 4 to 9, inclusive, of this act, the civil penalty the commissioner
469 may impose under this subsection and section 36a-50, as amended by
470 this act, shall not exceed one thousand dollars.

471 (3) In determining the amount of any penalty imposed under this
472 subsection and section 36a-50, as amended by this act, the
473 commissioner shall take into account (A) the size of the financial
474 resources and good faith of the Connecticut bank, Connecticut credit
475 union, officer or director of such Connecticut bank or Connecticut
476 credit union, (B) the gravity of the violation, breach, unsafe or unsound
477 practice or misuse of official position, (C) the history of previous
478 violations, breaches, unsafe or unsound practices, or misuse of official
479 position, and (D) such other matters as justice may require, except that
480 this subdivision does not apply to any violation of section 36a-53a and
481 sections 4 to 9, inclusive, of this act.

482 Sec. 12. Subsection (a) of section 36a-680 of the general statutes is
483 repealed and the following is substituted in lieu thereof:

484 (a) If the commissioner finds that the requirements of any other law
485 of this state relating to the disclosure of information in connection with
486 consumer credit transactions are inconsistent with the provisions of
487 sections 36a-675 to 36a-685, inclusive, or regulations adopted
488 thereunder, the commissioner [shall by regulation] may exempt
489 creditors who comply with said sections from compliance with such
490 inconsistent law. For purposes of this subsection, disclosure statutes
491 are inconsistent if both require disclosure of the same information even
492 though the prescribed definition, method of calculation or manner of
493 expression is different and, in case of such conflict or inconsistency, the
494 provisions of sections 36a-675 to 36a-685, inclusive, shall control,
495 provided sections 4 to 9, inclusive, of this act shall not be deemed
496 inconsistent with the provisions of sections 36a-675 to 36a-685,
497 inclusive, and shall control where applicable.

498 Sec. 13. (NEW) No licensee under section 36a-489 of the general

499 statutes and no person exempt from licensure under subdivisions (1),
500 (5) and (6) of section 36a-487 of the general statutes making a first
501 mortgage loan shall charge, impose or cause to be paid, directly or
502 indirectly, prepaid finance charges that exceed in the aggregate, the
503 greater of five per cent of the principal amount of the loan or two
504 thousand dollars. If the proceeds of the loan are used to refinance an
505 existing loan, the aggregate of the prepaid finance charges for the
506 current refinancing and any previous financings by such licensee or
507 exempt person or affiliate of such licensee or exempt person within
508 two years of the current refinancing shall not exceed the greater of five
509 per cent of the principal amount of the initial loan or two thousand
510 dollars. The provisions of this section shall not prohibit such licensee
511 or exempt person from charging, imposing or causing to be paid,
512 directly or indirectly, prepaid finance charges in addition to those
513 permitted by this section in connection with any additional proceeds
514 received by the borrower in the refinancing, provided such prepaid
515 finance charges on the additional proceeds shall not exceed five per
516 cent of the additional proceeds. For purposes of this section,
517 "additional proceeds" has the meaning given to that term in
518 subdivision (3) of section 7 of this act and "prepaid finance charge" has
519 the meaning given to that term in subdivision (6) of section 3 of this
520 act.

521 Sec. 14. Subsection (a) of section 36a-521 of the general statutes is
522 repealed and the following is substituted in lieu thereof:

523 (a) No person engaged in the secondary mortgage loan business in
524 this state as a lender, or a broker, including any licensee under sections
525 36a-510 to 36a-524, inclusive, and any person who is exempt from
526 licensing under section 36a-512, may (1) charge, impose or cause to be
527 paid, directly or indirectly, as an incident to or a condition of the
528 extension of credit in any secondary mortgage loan transaction, any
529 loan fees, points, commissions, transaction fees or similar prepaid
530 finance charges determined in accordance with sections 36a-675 to 36a-

531 685, inclusive, and regulations adopted thereunder, except the time-
532 price differential, which, when added to any broker's fee or
533 commission for which the borrower may be obligated, exceed in the
534 aggregate eight per cent of the principal amount of the loan or (2)
535 include in the loan agreement upon which loan fees, points,
536 commissions, transaction fees or similar prepaid finance charges have
537 been assessed any provision which permits the lender to demand
538 payment of the entire loan balance prior to the scheduled maturity,
539 except that such loan agreement may contain a provision which
540 permits the lender to demand payment of the entire loan balance if any
541 scheduled installment is in default for more than sixty days or if any
542 condition of default set forth in the mortgage note exists.

543 Sec. 15. Section 49-10a of the general statutes is repealed and the
544 following is substituted in lieu thereof:

545 A mortgagee shall, upon written request of the mortgagor or the
546 mortgagor's attorney or other authorized agent provide a payoff
547 statement in writing to the person requesting such statement on or
548 before the date specified in such request, provided such request date is
549 at least ten business days from the date of receipt of the written request
550 for a payoff statement. If the mortgagee fails to provide such payoff
551 statement on or before such request date, the mortgagee shall not be
552 entitled to the payment of any interest on the mortgage loan which is
553 secured by such mortgage which accrues after the expiration of such
554 request date. If the mortgagee provides the payoff statement to the
555 person requesting the same after the expiration of such request date,
556 interest on the mortgage loan which accrues after the receipt of such
557 payoff statement by the person who has requested it shall again be
558 payable. The burden of proof shall be on the mortgagor with respect to
559 the receipt by the mortgagee of the mortgagor's request for a payoff
560 statement of the mortgage loan, and thereafter shall be on the
561 mortgagee with respect to the receipt of the payoff statement by the
562 mortgagor or the mortgagor's attorney or other authorized agent. The

563 mortgagee shall not impose any fee or charge for the first payoff
564 statement requested within a calendar year, unless the mortgagor or
565 the mortgagor's attorney or other authorized agent requests expedited
566 delivery of the payoff statement, agrees to pay a fee for such expedited
567 delivery and the payoff statement is provided by the agreed upon
568 date.

Statement of Legislative Commissioners:

Language in section 3(4)(C) and section 10 was reworded for clarity.

BA *JOINT FAVORABLE SUBST.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Revenue Gain

Affected Agencies: Department of Banking

Municipal Impact: None

Explanation

State Impact:

The bill establishes the Connecticut Abusive Home Loan Lending Practices Act. The act requires lenders to make disclosures to borrowers concerning the signing of certain agreements. The act also specifies what kind of payment schedule can be developed for borrowers, prepayment penalty provisions, and specifies what information can be reported to consumer credit agencies. The commissioner may order a civil penalty, not exceeding \$15,000 for a violation by a person of any provision in the act.

The Department of Banking may get complaints from borrowers due to the stipulations in this act. It cannot be determined how many complaints will be made. The Department of Banking will be able to handle the number of complaints within anticipated budgetary resources.

There will be a potential revenue gain to the state if any civil penalties are ordered by the commissioner. The number of civil

penalties assessed cannot be determined along with the corresponding revenue gain.

OLR Bill Analysis

sHB 6131

AN ACT CONCERNING ABUSIVE HOME LOAN LENDING PRACTICES.

SUMMARY:

This bill requires lenders to make certain disclosures to prospective borrowers seeking high-cost home loans, including the interest rate and the consequences of mortgaging a home. It prohibits lenders from including certain loan provisions or from taking certain actions with respect to high-cost home loans, such as charging unwarranted or excessive fees or providing incomplete information. It also imposes conditions on a lender's ability to sell credit insurance to a borrower.

The bill allows lenders to charge a fee for payoff statements only when they are delivered on an expedited basis pursuant to an agreement with the borrower. It creates new penalties for lenders who violate its provisions. The bill also makes minor technical changes.

EFFECTIVE DATE: October 1, 2001

DISCLOSURES IN HIGH-COST HOME LOANS

The bill requires a lender to make certain disclosures to prospective borrowers seeking high-cost home loans. The bill defines a "lender" as a person who makes one or more high-cost home loans. A "high-cost home loan" is a mortgage for a one-to-four family residence made to someone who lives or plans to live there and for which the interest rate at the time the loan is made is more than 10% higher than the most recent rate for Treasury bills, notes, and bonds.

The lender must tell the buyer that he is not required to complete the loan agreement, and the consequences of putting a mortgage on his home, including the possibility of losing the home. The bill sets out the precise language the lender must use. The lender must also

disclose the interest rate, the payments that will be due, and information about possible changes in interest rates and the amount of the single maximum monthly payment for variable-rate mortgages.

LIMITATIONS ON LOANS AND LENDERS

The bill requires lenders to follow certain guidelines when making high-cost home loans. A lender or its assignee must refund or credit the borrower for any default charges, prepayment penalties, or prepaid finance charges collected in excess of the limits established under the bill.

Prohibited Provisions in High-Cost Home Loans

The bill prohibits the following terms in high-cost home loans:

1. a large extra payment at the end of a loan with a term of less than seven years;
2. a payment schedule that causes the principal balance to increase;
3. a payment schedule that consolidates more than two payments and pays them in advance from the proceeds;
4. an increase in the interest rate after default, or default charges more than 5% of the amount in default;
5. a refund of interest calculated by a method less favorable than applying payments first to finance charges, with any remainder applied to the principal;
6. a charge for paying all or part of the principal before it is due ("prepayment penalty"), except within the first three years of the loan. The lender may assess a prepayment penalty during the first three years of the loan, (with the maximum permissible penalty being 3% in the first year, 2% in the second, and 1% in the third), so long as the borrower's prepayment funds are not from a refinancing by the lender or its affiliate, and so long as the borrower's total monthly debts at the start of the loan, including amounts owed for the high-cost home loan, are not more than 50%

of the borrower's monthly gross income;

7. a mandatory arbitration clause or waiver of participation in a class action suit; and
8. a call provision allowing the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply when the loan is repaid on an accelerated basis because of actual default, under a due-on-sale clause provision or another provision of the loan agreement unrelated to the payment schedule, such as bankruptcy or receivership.

Prohibited Actions by Lenders Making High-Cost Home Loans

When making a high-cost home loan, a lender may not:

1. pay a contractor under a home improvement contract from the proceeds of the loan, except by an instrument payable to the borrower or jointly to the borrower and contractor or, if the borrower so chooses, through a third-party escrow agent in accordance with the terms in the written agreement;
2. sell or otherwise assign the loan without giving prescribed notice to the purchaser or assignee that the loan is subject to the rules of the bill and the purchaser or assignee could be liable for any claims the borrower has against the lender;
3. require the borrower to pay charges as a condition of the loan before closing ("prepaid finance charges") in excess of the greater of 5% of the principal amount of the loan or \$2,000. If the loan proceeds are used to refinance an existing loan, the same lender or its affiliate may not impose prepaid finance charges for the refinancing and earlier high-cost home loans in excess of the greater of 5% of the principal amount of the first loan or \$2,000. A lender may, however, impose other prepaid finance charges up to 5% on any "additional proceeds" (the amount by which the new loan exceeds the current principal amount of a closed-end loan, or the amount that the line of credit on the new loan exceeds the maximum credit limit on an existing open-end loan) that the borrower receives;

4. charge a borrower any fees to modify, renew, or extend a loan (except where it is 60 or more days past due and is modified, renewed, or extended as part of a work-out process) if the loan will continue to be a high-cost home loan, or, if no longer a high-cost home loan, the interest rate will not be reduced by at least 2%. A lender can charge prepaid finance charges of up to 5% of additional proceeds the borrower receives as a result of modifying, renewing, or extending the loan;
5. make the loan unless the lender reasonably believes that the borrower will be able to make the loan payments, based on the borrower's income, debts, employment status, and other financial factors. The borrower is presumed to be able to make the payments if his monthly debts, including the mortgage, are not more than 50% of his gross monthly income;
6. advertise that refinancing preexisting debt with a high-cost home loan will reduce a borrower's monthly debt payments without also disclosing that the loan may increase the borrower's total number of payments and the total amount the borrower will pay over the term of the loan;
7. recommend or encourage default on an existing loan or debt before the closing of a refinancing high-cost home loan;
8. make a loan that refinances an existing loan unless the new loan will truly benefit the borrower;
9. make a high-cost home loan with an unconscionable interest rate. The interest rate must be based on appropriate factors, such as creditworthiness, other risk-related standards, and sound underwriting, or else it may be considered unconscionable; or
10. charge the borrower fees for services that are not legitimate, reasonable or actually performed.

Prohibited Actions by Lenders Making First Mortgage Loans

The bill prohibits a lender making a first mortgage loan from requiring

the borrower to pay prepaid finance charges totaling in excess of the greater of 5% of the principal amount of the loan or \$2,000. If the loan proceeds are used to refinance an existing loan, the same lender or its affiliate may not impose prepaid finance charges on the refinancing and earlier loans made by the licensee within two years of the current refinancing that total in excess of the greater of 5% of the principal amount of the first loan or \$2,000. A lender may, however, impose other prepaid finance charges up to 5% of additional proceeds that the borrower receives for the refinancing.

Exception to Prohibited Actions by Lenders Making Secondary Mortgage Loans

The bill adds an exception to the law prohibiting a broker or lender in the secondary mortgage loan business from imposing loan fees, points, commissions, transaction fees, or similar prepaid finance charges in accordance with the Connecticut Truth-in-Lending Act which, when added to the broker's fee or commission, total more than 8% of the loan principal. The bill defines a "broker" as a person who is paid to negotiate, solicit, arrange, place, or find a high-cost loan for a lender to make. Lenders and brokers may charge an additional fee for allowing a buyer to pay the purchase price in installments ("time-price differential") rather than in one lump sum. The bill allows the total of the time-price differential and any broker's fee or commission to exceed 8% of the principal amount.

REPORTING REQUIREMENT

A lender making a high-cost home loan must annually report the borrower's payment history to a nationally recognized credit reporting agency while the lender holds or services the loan.

CREDIT INSURANCE OFFERS

As of January 1, 2002, a lender who offers a borrower the option to buy individual or group credit life, accident, health, disability, or unemployment insurance on a prepaid single premium basis must also offer him the option to buy the insurance on a monthly premium basis. If the borrower buys the insurance, he has the right to cancel it at any time and get a refund of any unearned premiums paid. The

lender must send notice to the borrower of his right to cancel, by mail, between 10 and 30 days after making the loan. The notice must also state the type of insurance purchased, its cost, and cancellation procedures.

PENALTIES FOR VIOLATIONS

Violation by Any Person

The bill allows the banking commissioner to charge up to a \$15,000 civil penalty per violation to any lender who (1) fails to make required disclosures to a prospective borrower about a high-cost home loan or credit insurance, (2) includes prohibited terms in a high-cost home loan, (3) fails to annually report a borrower's payment history to a credit bureau, (4) assesses excessive charges or penalties, or (5) engages in other prohibited behavior in making a high-cost home loan. Current law limits penalties for violating other banking laws to \$7,500.

The bill allows the commissioner to assess up to a \$15,000 civil penalty against any lender who receives notice from the commissioner of a violation of the bill and does not request a hearing within the time specified or fails to appear at the hearing. Current law limits penalties for failure to request or appear at a hearing for violations of other banking laws to \$7,500.

Violation by an Officer, Director, or Connecticut Financial Institution

Unless the commissioner finds that an officer, director, Connecticut bank, or Connecticut credit union has made a false or misleading statement with regard to required disclosures, prohibited terms, reporting of payment history, excessive charges and penalties, or other prohibited activities, the bill only allows the commissioner to assess a civil penalty of \$1,000. The bill does not specify the penalties that the commissioner may charge for false or misleading statements. The commissioner's duty to take into account the circumstances of the offense and the institution or officer's financial resources and good faith does not apply to violations of the bill.

DISCLOSURE OF INFORMATION

The bill gives the commissioner the option of exempting creditors who comply with the Connecticut Truth-in-Lending Act from inconsistent provisions of state banking law regarding disclosure of information. Under current law, he must exempt them by regulation. The bill specifies that its provisions concerning abusive home loan lending practices may not be deemed inconsistent with the Truth-in-Lending Act, and will control where applicable.

CHARGE FOR PAYOFF STATEMENT

Current law requires the lender to give the borrower, his agent, or his attorney, upon request, a statement showing the loan account status, sums due, and daily interest rate (“payoff statement”). The bill prohibits the lender from imposing any fee or charge for the first payment statement requested each year, unless the borrower, his agent, or his attorney agrees to pay a fee for expedited delivery of the payoff statement and the lender delivers it on time.

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute
Yea 17 Nay 0