



House of Representatives

General Assembly

File No. 44

February Session, 2002

Substitute House Bill No. 5073

House of Representatives, March 18, 2002

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 PREPAID FINANCE CHARGES.

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

1 Section 1. Section 3 of public act 01-34 is repealed and the following
2 is substituted in lieu thereof (*Effective from passage*):

3 As used in this section and sections 3 to 9, inclusive, of [this act]
4 public act 01-34:

5 (1) "APR" means the annual percentage rate for the loan calculated
6 according to the provisions of the federal Truth-in-Lending Act, 15
7 USC Section 1601 et seq., as from time to time amended, and the
8 regulations promulgated thereunder. For open-end lines of credit,
9 "APR" means the highest corresponding annual percentage rate
10 required to be disclosed under 12 CFR Sections 226.6(a)(2) and
11 226.14(b), as from time to time amended, excluding any maximum
12 rates required to be disclosed or stated pursuant to 12 CFR Sections
13 226.6(a)(2) or 226.30, as from time to time amended. For closed-end

14 loans, "APR" means the annual percentage rate required to be
15 disclosed under 12 CFR Section 226.18(e), as from time to time
16 amended, excluding any maximum rates required to be disclosed or
17 stated pursuant to 12 CFR Sections 226.18(f) or 226.30, as from time to
18 time amended. For purposes of this subdivision, any variable rate
19 calculation shall use an index value in effect within forty-five days
20 prior to consummation;

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

24 (3) "Consummation" means the time that a borrower becomes
25 contractually obligated on a [high cost home] loan or extension of
26 credit;

27 (4) "High cost home loan" means any loan or extension of credit,
28 including an open-end line of credit but excluding a reverse mortgage
29 transaction, as defined in 12 CFR Section 226.33, as from time to time
30 amended:

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

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

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

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

44 (5) "Interim interest" means interest for the period from funding to
45 the start of amortization paid by a borrower at or before
46 consummation of a closed-end loan where such amortization begins
47 sixty-two days or less after funding;

48 ~~[(5)]~~ (6) "Lender" means any person who originates one or more
49 high cost home loans;

50 ~~[(6)]~~ (7) "Prepaid finance charge" means any finance charge
51 [imposed as an incident to or a condition of the loan or extension of
52 credit payable by the borrower at or before the closing of the
53 transaction, including, but not limited to, loan fees, points,
54 commissions, broker's fees or commissions, transaction fees or similar
55 finance charges determined in accordance with sections 36a-675 to 36a-
56 685, inclusive, and regulations adopted thereunder, or] determined in
57 accordance with 12 CFR Section 226.4, as from time to time amended,
58 that is paid separately in cash or by check before or at consummation
59 of a loan or extension of credit or withheld from the proceeds of such
60 transaction at any time, except the term includes any fees or
61 commissions payable to the lender or broker in connection with the
62 sale of credit life, accident, health, disability or unemployment
63 insurance products or unrelated goods or services sold in conjunction
64 with the loan or extension of credit when the cost of such insurance
65 products or goods or services is prepaid with the proceeds of the loan
66 or extension of credit and financed as part of the principal amount of
67 the loan or extension of credit, [but excluding the time-price
68 differential, as such term is used in 12 CFR 226.32] and excludes
69 premiums, fees and any other amounts paid to a governmental agency,
70 any amounts required to be escrowed by a governmental agency and
71 interim interest;

72 ~~[(7)]~~ (8) "Prepayment penalty" means any charge or penalty for
73 paying all or part of the principal before the date on which the
74 principal is due and includes computing a refund of unearned interest
75 by a method that is less favorable to the borrower than the actuarial
76 method, as defined by Section 933(d) of the Housing and Community

77 Development Act of 1992, 15 USC 1615(d), as from time to time
78 amended.

79 Sec. 2. Section 5 of public act 01-34 is repealed and the following is
80 substituted in lieu thereof (*Effective from passage*):

81 A high cost home loan shall not provide for or include the
82 following:

83 (1) For a loan with a term of less than seven years, a payment
84 schedule with regular periodic payments that when aggregated do not
85 fully amortize the outstanding principal balance, except that this
86 limitation does not apply to a loan with maturities of less than one
87 year if the purpose of the loan is a bridge loan, as used in 12 CFR
88 226.32, as from time to time amended, connected with the acquisition
89 or construction of a dwelling intended to become the borrower's
90 principal dwelling;

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

93 (3) A payment schedule that consolidates more than two periodic
94 payments and pays them in advance from the proceeds, unless such
95 payments are required to be escrowed by a governmental agency;

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

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

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

107 (A) The penalty can be exercised only for the first three years
108 following consummation. No prepayment penalty shall exceed three
109 per cent of the balance prepaid for any payment occurring earlier than
110 one year after consummation of the loan, two per cent of the balance
111 prepaid for any payment occurring between one and two years after
112 consummation of the loan, and one per cent of the balance prepaid for
113 any payment occurring between two and three years after
114 consummation of the loan;

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

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

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

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

130 Sec. 3. Subsection (a) of section 36a-521 of the general statutes, as
131 amended by section 14 of public act 01-34, is repealed and the
132 following is substituted in lieu thereof (*Effective from passage*):

133 (a) No person engaged in the secondary mortgage loan business in
134 this state as a lender, or a broker, including any licensee under sections
135 36a-510 to 36a-524, inclusive, and any person who is exempt from
136 licensing under section 36a-512, may (1) charge, impose or cause to be
137 paid, directly or indirectly, [as an incident to or a condition of the

138 extension of credit] in connection with any secondary mortgage loan
 139 transaction, [any loan fees, points, commissions, transaction fees or
 140 similar prepaid finance charges determined in accordance with
 141 sections 36a-675 to 36a-685, inclusive, and regulations adopted
 142 thereunder, except the time-price differential, which, when added to
 143 any broker's fee or commission for which the borrower may be
 144 obligated,] prepaid finance charges that exceed in the aggregate eight
 145 per cent of the principal amount of the loan, or (2) include in the loan
 146 agreement [upon] under which [loan fees, points, commissions,
 147 transaction fees or similar] prepaid finance charges have been assessed
 148 any provision which permits the lender to demand payment of the
 149 entire loan balance prior to the scheduled maturity, except that such
 150 loan agreement may contain a provision which permits the lender to
 151 demand payment of the entire loan balance if any scheduled
 152 installment is in default for more than sixty days or if any condition of
 153 default set forth in the mortgage note exists. For purposes of this
 154 section, "prepaid finance charge" has the meaning given to that term in
 155 section 3 of public act 01-34, as amended by this act.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>

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: None

Municipal Impact: None

Explanation

The bill concerns prepaid finance charges in conjunction with secondary mortgage loan transactions and does not have a fiscal impact.

OLR Bill Analysis

sHB 5073

AN ACT CONCERNING PREPAID FINANCE CHARGES**SUMMARY:**

This bill expands the definition of “prepaid finance charge” to include a finance charge the borrower pays either (1) by cash or check before or at the loan consummation or credit extension or (2) by withholding funds at any time from the transaction’s proceeds. Under current law, the term also includes a lender or broker’s commission or fee for selling prepaid credit life, accident, health, disability, or unemployment insurance or other goods and services that the customer pays for with the loan or credit proceeds and finances as part of the principal amount.

The bill also removes the exclusion of the time-price differential from the meaning of prepaid finance charges and instead exempts (1) premiums, fees, and other sums paid to, or escrowed by, a government agency and (2) interim interest. It defines “interim interest” as the interest the borrower pays during the period at or before consummating a closed-end loan, so long as the borrower starts paying off the loan within 62 days.

The bill applies the definition of “consummation” for purposes of determining when a party becomes contractually obligated for a loan to (1) all loans, not just high cost home loans and (2) extensions of credit.

Current law prohibits high-cost home loan payment schedules from consolidating more than two periodic payments and paying them in advance from the proceeds. The bill allows such payment schedules if a government agency is required to escrow them. It makes a conforming change to a provision prohibiting a secondary mortgage broker or lender from imposing loan fees, points, commissions, or transaction fees determined in accordance with the Connecticut Truth-in-Lending Act, except the time-price differential, to prohibit all prepaid finance charges which, when added to the broker’s fee or commission, total more than 8% of the loan principal.

EFFECTIVE DATE: Upon passage

COMMITTEE ACTION

Banks Committee

Joint Favorable Substitute

Yea 17 Nay 0