



General Assembly

January Session, 2005

**Raised Bill No. 1217**

LCO No. 4092

\*04092\_\_\_\_\_BA\_\*

Referred to Committee on Banks

Introduced by:

(BA)

**AN ACT CONCERNING PREDATORY LENDING.**

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

1 Section 1. Section 36a-2 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 As used in this title, unless the context otherwise requires:

4 (1) "Affiliate" of a person means any person controlling, controlled  
5 by, or under common control with, that person;

6 (2) "Applicant" with respect to any license or approval provision  
7 pursuant to this title means a person who applies for that license or  
8 approval;

9 (3) "Automated teller machine" means a stationary or mobile  
10 unattended device, including a satellite device but excluding a point of  
11 sale terminal, at which banking transactions, including, but not limited  
12 to, deposits, withdrawals, advances, payments or transfers, may be  
13 conducted;

14 (4) "Bank" means a Connecticut bank or a federal bank;

15 (5) "Bank and trust company" means an institution chartered or  
16 organized under the laws of this state as a bank and trust company;

17 (6) "Bank holding company" has the meaning given to that term in  
18 12 USC Section 1841(a), as from time to time amended, except that the  
19 term "bank", as used in 12 USC Section 1841(a) includes a bank or out-  
20 of-state bank that functions solely in a trust or fiduciary capacity;

21 (7) "Capital stock" when used in conjunction with any bank or out-  
22 of-state bank means a bank or out-of-state bank that is authorized to  
23 accumulate funds through the issuance of its capital stock;

24 (8) "Client" means a beneficiary of a trust for whom the Connecticut  
25 bank acts as trustee, a person for whom the Connecticut bank acts as  
26 agent, custodian or bailee, or other person to whom a Connecticut  
27 bank owes a duty or obligation under a trust or other account  
28 administered by such Connecticut bank, regardless of whether such  
29 Connecticut bank owes a fiduciary duty to the person;

30 (9) "Club deposit" means deposits to be received at regular intervals,  
31 the whole amount deposited to be withdrawn by the owner or repaid  
32 by the bank in not more than fifteen months from the date of the first  
33 deposit, and upon which no interest or dividends need to be paid;

34 (10) "Commissioner" means the Banking Commissioner and, with  
35 respect to any function of the commissioner, includes any person  
36 authorized or designated by the commissioner to carry out that  
37 function;

38 (11) "Company" means any corporation, joint stock company, trust,  
39 association, partnership, limited partnership, unincorporated  
40 organization, limited liability company or similar organization, but  
41 does not include (A) any corporation the majority of the shares of  
42 which are owned by the United States or by any state, or (B) any trust  
43 which by its terms shall terminate within twenty-five years or not later  
44 than twenty-one years and ten months after the death of beneficiaries

45 living on the effective date of the trust;

46 (12) "Connecticut bank" means a bank and trust company, savings  
47 bank or savings and loan association chartered or organized under the  
48 laws of this state;

49 (13) "Connecticut credit union" means a cooperative, nonprofit  
50 financial institution that (A) is organized under chapter 667 and the  
51 membership of which is limited as provided in section 36a-438a, (B)  
52 operates for the benefit and general welfare of its members with the  
53 earnings, benefits or services offered being distributed to or retained  
54 for its members, and (C) is governed by a volunteer board of directors  
55 elected by and from its membership;

56 (14) "Connecticut credit union service organization" means a credit  
57 union service organization that is incorporated under the laws of this  
58 state, located in this state and established by at least one Connecticut  
59 credit union;

60 (15) "Consolidation" means a combination of two or more  
61 institutions into a new institution; all institutions party to the  
62 consolidation, other than the new institution, are "constituent"  
63 institutions; the new institution is the "resulting" institution;

64 (16) "Control" has the meaning given to that term in 12 USC Section  
65 1841(a), as from time to time amended;

66 (17) "Credit union service organization" means an entity organized  
67 under state or federal law to provide credit union service organization  
68 services primarily to its members, to Connecticut credit unions, federal  
69 credit unions and out-of-state credit unions other than its members,  
70 and to members of any such other credit unions;

71 (18) "Customer" means any person using a service offered by a  
72 financial institution;

73 (19) "Demand account" means an account into which demand

74 deposits may be made;

75 (20) "Demand deposit" means a deposit that is payable on demand,  
76 a deposit issued with an original maturity or required notice period of  
77 less than seven days or a deposit representing funds for which the  
78 bank does not reserve the right to require at least seven days' written  
79 notice of the intended withdrawal, but does not include any time  
80 deposit;

81 (21) "Deposit" means funds deposited with a depository;

82 (22) "Deposit account" means an account into which deposits may  
83 be made;

84 (23) "Depositor" includes a member of a mutual savings and loan  
85 association;

86 (24) "Director" means a member of the governing board of a  
87 financial institution;

88 (25) "Equity capital" means the excess of a Connecticut bank's total  
89 assets over its total liabilities, as defined in the instructions of the  
90 federal Financial Institutions Examination Council for consolidated  
91 reports of condition and income;

92 (26) "Executive officer" means every officer of a Connecticut bank  
93 who participates or has authority to participate, otherwise than in the  
94 capacity of a director, in major policy-making functions of such bank,  
95 regardless of whether such officer has an official title or whether that  
96 title contains a designation of assistant and regardless of whether such  
97 officer is serving without salary or other compensation. The president,  
98 vice president, secretary and treasurer of such bank are deemed to be  
99 executive officers, unless, by resolution of the governing board or by  
100 such bank's bylaws, any such officer is excluded from participation in  
101 major policy-making functions, otherwise than in the capacity of a  
102 director of such bank, and such officer does not actually participate in  
103 such policy-making functions;

104 (27) "Federal agency" has the meaning given to that term in 12 USC  
105 Section 3101, as from time to time amended;

106 (28) "Federal bank" means a national banking association, federal  
107 savings bank or federal savings and loan association having its  
108 principal office in this state;

109 (29) "Federal branch" has the meaning given to that term in 12 USC  
110 Section 3101, as from time to time amended;

111 (30) "Federal credit union" means any institution chartered or  
112 organized as a federal credit union pursuant to the laws of the United  
113 States having its principal office in this state;

114 (31) "Fiduciary" means a person undertaking to act alone or jointly  
115 with others primarily for the benefit of another or others in all matters  
116 connected with its undertaking and includes a person acting in the  
117 capacity of trustee, executor, administrator, guardian, assignee,  
118 receiver, conservator, agent, custodian under the Connecticut Uniform  
119 Gifts to Minors Act or the Uniform Transfers to Minors Act, and acting  
120 in any other similar capacity;

121 (32) "Financial institution" means any Connecticut bank,  
122 Connecticut credit union, or other person whose activities in this state  
123 are subject to the supervision of the commissioner, but does not  
124 include a person whose activities are subject to the supervision of the  
125 commissioner solely pursuant to chapter 672a, 672b or 672c or any  
126 combination thereof;

127 (33) "Foreign bank" has the meaning given to that term in 12 USC  
128 Section 3101, as from time to time amended;

129 (34) "Foreign country" means any country other than the United  
130 States and includes any colony, dependency or possession of any such  
131 country;

132 (35) "Governing board" means the group of persons vested with the

133 management of the affairs of a financial institution irrespective of the  
134 name by which such group is designated;

135 (36) "Holding company" means a bank holding company or a  
136 savings and loan holding company, except, as used in sections 36a-180  
137 to 36a-191, inclusive, "holding company" means a company that  
138 controls a bank;

139 (37) "Insured depository institution" has the meaning given to that  
140 term in 12 USC Section 1813, as from time to time amended;

141 (38) "Licensee" means any person who is licensed or required to be  
142 licensed pursuant to the applicable provisions of this title;

143 (39) "Loan" includes any line of credit or other extension of credit;

144 (40) "Merger" means the combination of one or more institutions  
145 with another which continues its corporate existence; all institutions  
146 party to the merger are "constituent" institutions; the merging  
147 institution which upon the merger continues its existence is the  
148 "resulting" institution;

149 (41) "Mutual" when used in conjunction with any institution that is a  
150 bank or out-of-state bank means any such institution without capital  
151 stock;

152 (42) "Mutual holding company" means a mutual holding company  
153 organized under sections 36a-192 to 36a-199, inclusive, and unless  
154 otherwise indicated, a subsidiary holding company controlled by a  
155 mutual holding company organized under sections 36a-192 to 36a-199,  
156 inclusive;

157 (43) "Out-of-state" includes any state other than Connecticut and  
158 any foreign country;

159 (44) "Out-of-state bank" means any institution that engages in the  
160 business of banking, but does not include a bank, Connecticut credit

161 union, federal credit union or out-of-state credit union;

162 (45) "Out-of-state credit union" means any credit union other than a  
163 Connecticut credit union or a federal credit union;

164 (46) "Out-of-state trust company" means any company chartered to  
165 act as a fiduciary but does not include a company chartered under the  
166 laws of this state, a bank, an out-of-state bank, a Connecticut credit  
167 union, a federal credit union or an out-of-state credit union;

168 (47) "Person" means an individual, company, including a company  
169 described in subparagraphs (A) and (B) of subdivision (10) of this  
170 section, or any other legal entity, including a federal, state or municipal  
171 government or agency or any political subdivision thereof;

172 (48) "Point of sale terminal" means a device located in a commercial  
173 establishment at which sales transactions can be charged directly to the  
174 buyer's deposit, loan or credit account, but at which deposit  
175 transactions cannot be conducted;

176 (49) "Prepayment penalty" means any charge or penalty for paying  
177 all or part of the principal before the date on which the principal is due  
178 and includes computing a refund of unearned interest by a method  
179 that is less favorable to the borrower than the actuarial method, as  
180 defined by Section 933(d) of the Housing and Community  
181 Development Act of 1992, 15 USC 1615(d), as from time to time  
182 amended;

183 [(49)] (50) "Reorganized savings bank" means any savings bank  
184 incorporated and organized in accordance with sections 36a-192 and  
185 36a-193;

186 [(50)] (51) "Reorganized savings and loan association" means any  
187 savings and loan association incorporated and organized in  
188 accordance with sections 36a-192 and 36a-193;

189 [(51)] (52) "Reorganized savings institution" means any reorganized

190 savings bank or reorganized savings and loan association;

191 [(52)] (53) "Representative office" has the meaning given to that term  
192 in 12 USC Section 3101, as from time to time amended;

193 [(53)] (54) "Reserves for loan and lease losses" means the amounts  
194 reserved by a Connecticut bank against possible loan and lease losses  
195 as shown on the bank's consolidated reports of condition and income;

196 [(54)] (55) "Retail deposits" means any deposits made by individuals  
197 who are not "accredited investors", as defined in 17 CFR Section  
198 230.501(a);

199 [(55)] (56) "Satellite device" means an automated teller machine  
200 which is not part of an office of the bank, Connecticut credit union or  
201 federal credit union which has established such machine;

202 [(56)] (57) "Savings account" means a deposit account, other than an  
203 escrow account established pursuant to section 49-2a, into which  
204 savings deposits may be made and which account must be evidenced  
205 by periodic statements delivered at least semiannually or by a  
206 passbook;

207 [(57)] (58) "Savings and loan association" means an institution  
208 chartered or organized under the laws of this state as a savings and  
209 loan association;

210 [(58)] (59) "Savings bank" means an institution chartered or  
211 organized under the laws of this state as a savings bank;

212 [(59)] (60) "Savings deposit" means any deposit other than a  
213 demand deposit or time deposit on which interest or a dividend is  
214 paid periodically;

215 [(60)] (61) "Savings and loan holding company" has the meaning  
216 given to that term in 12 USC Section 1467a, as from time to time  
217 amended;

218        [(61)] (62) "Share account holder" means a person who maintains a  
219        share account in a Connecticut credit union, federal credit union or  
220        out-of-state credit union that maintains in this state a branch, as  
221        defined in section 36a-435b;

222        [(62)] (63) "State" means any state of the United States, the District of  
223        Columbia, any territory of the United States, Puerto Rico, Guam,  
224        American Samoa, the trust territory of the Pacific Islands, the Virgin  
225        Islands and the Northern Mariana Islands;

226        [(63)] (64) "State agency" has the meaning given to that term in 12  
227        USC Section 3101, as from time to time amended;

228        [(64)] (65) "State branch" has the meaning given to that term in 12  
229        USC Section 3101, as from time to time amended;

230        [(65)] (66) "Subsidiary" has the meaning given to that term in 12  
231        USC Section 1841(d), as from time to time amended;

232        [(66)] (67) "Subsidiary holding company" means a stock holding  
233        company, controlled by a mutual holding company, that holds one  
234        hundred per cent of the stock of a reorganized savings institution;

235        [(67)] (68) "Supervisory agency" means: (A) The commissioner; (B)  
236        the Federal Deposit Insurance Corporation; (C) the Resolution Trust  
237        Corporation; (D) the Office of Thrift Supervision; (E) the National  
238        Credit Union Administration; (F) the Board of Governors of the  
239        Federal Reserve System; (G) the United States Comptroller of the  
240        Currency; and (H) any successor to any of the foregoing agencies or  
241        individuals;

242        [(68)] (69) "Time account" means an account into which time  
243        deposits may be made;

244        [(69)] (70) "Time deposit" means a deposit that the depositor or  
245        share account holder does not have a right and is not permitted to  
246        make withdrawals from within six days after the date of deposit,

247 unless the deposit is subject to an early withdrawal penalty of at least  
248 seven days' simple interest on amounts withdrawn within the first six  
249 days after deposit, subject to those exceptions permissible under 12  
250 CFR Part 204, as from time to time amended;

251 [(70)] (71) "Trust bank" means a Connecticut bank organized to  
252 function solely in a fiduciary capacity; and

253 [(71)] (72) "Uninsured bank" means a Connecticut bank that does  
254 not accept retail deposits and for which insurance of deposits by the  
255 Federal Deposit Insurance Corporation or its successor agency is not  
256 required.

257 Sec. 2. Subsection (b) of section 36a-261 of the general statutes is  
258 repealed and the following is substituted in lieu thereof (*Effective*  
259 *October 1, 2005*):

260 (b) (1) The assets of Connecticut banks may be invested in mortgage  
261 loans, subject to the general limitations set forth in this section.

262 (2) Any such mortgage loan shall be secured either by (A) a first  
263 mortgage which is a first lien or (B) a mortgage which is subordinate to  
264 another mortgage or other mortgages, provided, in the case of a loan  
265 secured by a mortgage which is subordinate to another mortgage or  
266 other mortgages, which other mortgage or mortgages are held by a  
267 person other than the Connecticut bank, the real estate securing such  
268 loan is (i) residential real estate, or (ii) nonresidential real estate  
269 provided the loan does not exceed, at the time of origination, a loan-to-  
270 value ratio of fifty per cent, or (iii) nonresidential real estate in a loan  
271 transaction which, at the time of origination, exceeds a loan-to-value  
272 ratio of fifty per cent, provided the aggregate amount of all such loans  
273 made pursuant to this subparagraph (B)(iii) does not exceed, at the  
274 time of origination, twenty-five per cent of the equity capital and  
275 reserves for loan and lease losses of the Connecticut bank. A loan  
276 which was included within the aggregate limit of subparagraph (B)(iii)  
277 of this subdivision subsequently may be excluded if the loan is repaid

278 or if the applicable loan-to-value ratio is reduced to fifty per cent or  
279 below because of a reduction in principal or senior liens, additional  
280 contributions of real estate collateral, or an increase in equity value  
281 substantiated by a current suitable appraisal or evaluation. Except  
282 where the proceeds are being used to refinance an existing mortgage  
283 loan with the same lender or an affiliate of such lender, a mortgage  
284 loan may provide for or include a prepayment penalty, including a  
285 refund calculated according to the rule of 78s, as such term is used in  
286 12 CFR 226.32, as from time to time amended, if such penalty can be  
287 exercised only for the first three years following consummation of the  
288 loan. No prepayment penalty shall exceed three per cent of the balance  
289 prepaid for any payment occurring earlier than one year after  
290 consummation of the loan, two per cent of the balance prepaid for any  
291 payment occurring between one and two years after consummation of  
292 the loan, and one per cent of the balance prepaid for any payment  
293 occurring after two years but not later than three years after  
294 consummation of the loan. If the proceeds of the mortgage loan are  
295 used to refinance an existing mortgage loan, the new mortgage loan  
296 shall provide a benefit to the borrower considering all of the  
297 circumstances, including the terms of both the new and refinanced  
298 loans, the costs of the new loan and the borrower's circumstances.  
299 Each mortgage loan shall require the approval of the borrower to  
300 change the payment due date from the due date specified in the note  
301 evidencing the mortgage loan.

302 Sec. 3. Subsection (f) of section 36a-457b of the general statutes is  
303 repealed and the following is substituted in lieu thereof (*Effective*  
304 *October 1, 2005*):

305 (f) A mortgage loan made by a Connecticut credit union shall  
306 require repayment of principal and payment of interest in at least  
307 consecutive semiannual installments of principal and interest, such  
308 payments to be sufficient to pay the loan in full not later than forty-two  
309 years from the date of the first payment and the first payment to be  
310 made within twenty-four months from the date of the note. The

311 requirements for semiannual principal payments pursuant to this  
312 subsection are not applicable to: (1) Consumer revolving loan  
313 agreements made pursuant to subsection (c) of section 49-2, (2)  
314 alternative mortgage loans made pursuant to section 36a-265, (3) loans  
315 that may be demanded at any time and that are secured by residential  
316 real estate, and (4) any other loan or class of loans determined by the  
317 commissioner not to be subject to such requirements. Except where the  
318 proceeds are being used to refinance an existing mortgage loan with  
319 the same lender or an affiliate of such lender, a mortgage loan made  
320 by a Connecticut credit union may provide for or include a  
321 prepayment penalty, including a refund calculated according to the  
322 rule of 78s, as such term is used in 12 CFR 226.32, as from time to time  
323 amended, if such penalty can be exercised only for the first three years  
324 following consummation of the loan. No prepayment penalty shall  
325 exceed three per cent of the balance prepaid for any payment  
326 occurring earlier than one year after consummation of the loan, two  
327 per cent of the balance prepaid for any payment occurring between  
328 one and two years after consummation of the loan, and one per cent of  
329 the balance prepaid for any payment occurring after two years but not  
330 later than three years after consummation of the loan. If the proceeds  
331 of the mortgage loan are used to refinance an existing mortgage loan,  
332 the new mortgage loan shall provide a benefit to the borrower  
333 considering all of the circumstances, including the terms of both the  
334 new and refinanced loans, the costs of the new loan and the borrower's  
335 circumstances. Each such mortgage loan shall require the approval of  
336 the borrower to change the payment due date from the due date  
337 specified in the note evidencing the mortgage loan.

338 Sec. 4. Section 36a-498a of the general statutes is repealed and the  
339 following is substituted in lieu thereof (*Effective October 1, 2005*):

340 No licensee under section 36a-489 and no person exempt from  
341 licensure under subdivisions (1), (5) and (6) of section 36a-487 making  
342 a first mortgage loan shall charge, impose or cause to be paid, directly  
343 or indirectly, prepaid finance charges that exceed in the aggregate, the

344 greater of five per cent of the principal amount of the loan or two  
345 thousand dollars. If the proceeds of the loan are used to refinance an  
346 existing loan, the aggregate of the prepaid finance charges for the  
347 current refinancing and any previous financings by such licensee or  
348 exempt person or affiliate of such licensee or exempt person within  
349 two years of the current refinancing shall not exceed the greater of five  
350 per cent of the principal amount of the initial loan or two thousand  
351 dollars. The provisions of this section shall not prohibit such licensee  
352 or exempt person from charging, imposing or causing to be paid,  
353 directly or indirectly, prepaid finance charges in addition to those  
354 permitted by this section in connection with any additional proceeds  
355 received by the borrower in the refinancing, provided such prepaid  
356 finance charges on the additional proceeds shall not exceed five per  
357 cent of the additional proceeds. Except where the proceeds are being  
358 used to refinance an existing mortgage loan with the same lender or an  
359 affiliate of such lender, a first mortgage loan may provide for or  
360 include a prepayment penalty, including a refund calculated according  
361 to the rule of 78s, as such term is used in 12 CFR 226.32, as from time to  
362 time amended, if such penalty can be exercised only for the first three  
363 years following consummation of the loan. No prepayment penalty  
364 shall exceed three per cent of the balance prepaid for any payment  
365 occurring earlier than one year after consummation of the loan, two  
366 per cent of the balance prepaid for any payment occurring between  
367 one and two years after consummation of the loan, and one per cent of  
368 the balance prepaid for any payment occurring after two years but not  
369 later than three years after consummation of the loan. If the proceeds  
370 of the mortgage loan are used to refinance an existing mortgage loan,  
371 the new mortgage loan shall provide a benefit to the borrower  
372 considering all of the circumstances, including the terms of both the  
373 new and refinanced loans, the costs of the new loan and the borrower's  
374 circumstances. Each such mortgage loan shall require the approval of  
375 the borrower to change the payment due date from the due date  
376 specified in the note evidencing the mortgage loan. For purposes of  
377 this section, "additional proceeds" has the meaning given to that term

378 in subdivision (3) of section 36a-746e and "prepaid finance charge" has  
379 the meaning given to that term in subdivision (7) of section 36a-746a.

380 Sec. 5. Section 36a-519 of the general statutes is repealed and the  
381 following is substituted in lieu thereof (*Effective October 1, 2005*):

382 (a) In any transaction subject to part III of chapter 669 and except as  
383 permitted in subsection (b) of this section, no mortgage lender licensee  
384 shall impose any charge as a penalty for the prepayment of principal of  
385 a secondary mortgage loan, [which exceeds five per cent of the balance  
386 prepaid, provided no penalty shall be imposed for any prepayment  
387 occurring more than three years after the date of such loan.]

388 (b) Except where the proceeds are being used to refinance an  
389 existing mortgage loan with the same lender or an affiliate of such  
390 lender, a secondary mortgage loan may provide for or include a  
391 prepayment penalty, including a refund calculated according to the  
392 rule of 78s, as such term is used in 12 CFR 226.32, as from time to time  
393 amended, if such penalty can be exercised only for the first three years  
394 following consummation of the loan. No prepayment penalty shall  
395 exceed three per cent of the balance prepaid for any payment  
396 occurring earlier than one year after consummation of the loan, two  
397 per cent of the balance prepaid for any payment occurring between  
398 one and two years after consummation of the loan, and one per cent of  
399 the balance prepaid for any payment occurring after two years but not  
400 later than three years after consummation of the loan. If the proceeds  
401 of the mortgage loan are used to refinance an existing mortgage loan,  
402 the new mortgage loan shall provide a benefit to the borrower  
403 considering all of the circumstances, including the terms of both the  
404 new and refinanced loans, the costs of the new loan and the borrower's  
405 circumstances. Each such mortgage loan shall require the approval of  
406 the borrower to change the payment due date from the due date  
407 specified in the note evidencing the mortgage loan.

408 Sec. 6. Section 36a-746a of the general statutes is repealed and the  
409 following is substituted in lieu thereof (*Effective October 1, 2005*):

410 As used in this section and sections 36a-746b to 36a-746g, inclusive,  
411 as amended by this act:

412 (1) "APR" means the annual percentage rate for the loan calculated  
413 according to the provisions of the federal Truth-in-Lending Act, 15  
414 USC Section 1601 et seq., as from time to time amended, and the  
415 regulations promulgated thereunder. For open-end lines of credit,  
416 "APR" means the highest corresponding annual percentage rate  
417 required to be disclosed under 12 CFR Sections 226.6(a)(2) and  
418 226.14(b), as from time to time amended, excluding any maximum  
419 rates required to be disclosed or stated pursuant to 12 CFR Sections  
420 226.6(a)(2) or 226.30, as from time to time amended. For closed-end  
421 loans, "APR" means the annual percentage rate required to be  
422 disclosed under 12 CFR Section 226.18(e), as from time to time  
423 amended, excluding any maximum rates required to be disclosed or  
424 stated pursuant to 12 CFR Sections 226.18(f) or 226.30, as from time to  
425 time amended. For purposes of this subdivision, any variable rate  
426 calculation shall use an index value in effect within forty-five days  
427 prior to consummation;

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

431 (3) "Consummation" means the time that a borrower becomes  
432 contractually obligated on a loan or extension of credit;

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

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

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

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

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

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

454 (6) "Lender" means any person who originates one or more high  
455 cost home loans;

456 (7) "Prepaid finance charge" means any finance charge determined  
457 in accordance with 12 CFR Section 226.4, as from time to time  
458 amended, that is paid separately in cash or by check before or at  
459 consummation of a loan or extension of credit or withheld from the  
460 proceeds of such transaction at any time, except the term includes any  
461 fees or commissions payable to the lender or broker in connection with  
462 the sale of credit life, accident, health, disability or unemployment  
463 insurance products or unrelated goods or services sold in conjunction  
464 with the loan or extension of credit when the cost of such insurance  
465 products or goods or services is prepaid with the proceeds of the loan  
466 or extension of credit and financed as part of the principal amount of  
467 the loan or extension of credit, and excludes premiums, fees and any  
468 other amounts paid to a governmental agency, any amounts required  
469 to be escrowed by a governmental agency and interim interest. [;]

470 [(8) "Prepayment penalty" means any charge or penalty for paying

471 all or part of the principal before the date on which the principal is due  
472 and includes computing a refund of unearned interest by a method  
473 that is less favorable to the borrower than the actuarial method, as  
474 defined by Section 933(d) of the Housing and Community  
475 Development Act of 1992, 15 USC 1615(d), as from time to time  
476 amended.]

477 Sec. 7. Section 36a-746c of the general statutes is repealed and the  
478 following is substituted in lieu thereof (*Effective October 1, 2005*):

479 A high cost home loan shall not provide for or include the  
480 following:

481 (1) For a loan with a term of less than seven years, a payment  
482 schedule with regular periodic payments that when aggregated do not  
483 fully amortize the outstanding principal balance, except that this  
484 limitation does not apply to a loan with maturities of less than one  
485 year if the purpose of the loan is a bridge loan, as used in 12 CFR  
486 226.32, as from time to time amended, connected with the acquisition  
487 or construction of a dwelling intended to become the borrower's  
488 principal dwelling;

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

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

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

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

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

505 (A) The penalty can be exercised only for the first three years  
506 following consummation. No prepayment penalty shall exceed three  
507 per cent of the balance prepaid for any payment occurring earlier than  
508 one year after consummation of the loan, two per cent of the balance  
509 prepaid for any payment occurring between one and two years after  
510 consummation of the loan, and one per cent of the balance prepaid for  
511 any payment occurring between two and three years after  
512 consummation of the loan;

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

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

520 (7) A mandatory arbitration clause or a waiver of participation in a  
521 class action; [or]

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

528 (9) A provision that permits the lender to change the payment due  
529 date from the due date specified in the note evidencing the mortgage  
530 loan without the written consent of the borrower.

531       Sec. 8. of the general statutes is amended by adding subsection (o)  
 532 as follows (*Effective October 1, 2005*):

533       (NEW) (o) In the case of a mortgage loan where the borrower has  
 534 the right to rescind under the Consumer Credit Protection Act (15 USC  
 535 1635), the lender shall provide, at the time of the signing of the  
 536 mortgage loan application by the borrower, written notice to the  
 537 borrower, substantially similar to the following: "You have a three-day  
 538 right to rescind this agreement. If you are thinking about whether this  
 539 agreement is appropriate for you, you may wish to contact a housing  
 540 counselor. The United States Department of Housing and Urban  
 541 Development certifies housing counselors. To obtain a list of such  
 542 certified counselors, you should contact the United States Department  
 543 of Housing and Urban Development at its Connecticut office or visit  
 544 the department's web site."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	36a-2
Sec. 2	<i>October 1, 2005</i>	36a-261(b)
Sec. 3	<i>October 1, 2005</i>	36a-457b(f)
Sec. 4	<i>October 1, 2005</i>	36a-498a
Sec. 5	<i>October 1, 2005</i>	36a-519
Sec. 6	<i>October 1, 2005</i>	36a-746a
Sec. 7	<i>October 1, 2005</i>	36a-746c
Sec. 8	<i>October 1, 2005</i>	New section

**Statement of Purpose:**

To (1) insert the definition of "prepayment penalty" from section 36a-746a of the general statutes into section 36a-2 of the general statutes; (2) apply the same prepayment penalties limitation currently in high cost mortgages to all mortgages in the state whereby prepayment penalties cannot exceed three per cent of the principal paid off during the first year, two per cent during the second year and one per cent during the third year. Unscrupulous lenders are avoiding the high cost loan limitation on prepayment penalties by restructuring the mortgage to avoid the definition of high cost loan; (3) prohibit prepayment

penalties when the mortgagee is refinancing a mortgage with the same lender or affiliate of such lender; (4) require that all refinancing of existing mortgages have some benefit to the borrower applying the current language in the high cost mortgage statute, section 36a-746e(8) of the general statutes; (5) require the borrower's written consent to change the payment due date on a mortgage loan; and (6) require lenders whose loans are subject to the Truth in Lending Act to notify the borrower that they may wish to contact a housing counselor to determine whether to cancel the loan within the three-day rescission period. The notice refers the borrower to the United States Department of Housing and Urban Development for further information.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*