



General Assembly

Substitute Bill No. 7073

January Session, 2007

* HB07073JUD 041107 *

AN ACT PROTECTING CONSUMERS' PRIVACY IN MORTGAGE APPLICATIONS.

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

1 Section 1. Section 36a-498 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Except as provided in subsection (c) of this section, every
4 advance fee paid or given, directly or indirectly, to a mortgage lender
5 or first mortgage broker required to be licensed pursuant to sections
6 36a-485 to 36a-498a, inclusive, shall be refundable.

7 (b) No originator required to be registered pursuant to sections 36a-
8 485 to 36a-498a, inclusive, shall accept payment of any advance fee
9 except an advance fee on behalf of a licensee. Nothing in this
10 subsection shall be construed as prohibiting the licensee from paying
11 an originator all or part of an advance fee, provided such advance fee
12 paid is not refundable under this section.

13 (c) Subsection (a) of this section shall not apply if: (1) The person
14 providing the advance fee and the mortgage lender or first mortgage
15 broker agree in writing that the advance fee shall not be refundable, in
16 whole or in part; and (2) the written agreement complies in all respects
17 with the provisions of subsection (d) of this section.

18 (d) An agreement under subsection (c) of this section shall meet all
19 of the following requirements to be valid and enforceable: (1) The
20 agreement shall be dated, signed by both parties, and be executed
21 prior to the payment of any advance fee; (2) the agreement shall
22 expressly state the total advance fee required to be paid and any
23 amount of the advance fee that shall not be refundable; (3) the
24 agreement shall clearly and conspicuously state any conditions under
25 which the advance fee will be retained by the licensee; (4) the term
26 "nonrefundable" shall be used to describe each advance fee or portion
27 thereof to which the term is applicable, and shall appear in boldface
28 type in the agreement each time it is used; and (5) the form of the
29 agreement shall (A) be separate from any other forms, contracts, or
30 applications utilized by the licensee, (B) contain a heading in a size
31 equal to at least ten-point boldface type that shall title the form
32 "AGREEMENT CONCERNING NONREFUNDABILITY OF
33 ADVANCE FEE", (C) provide for a duplicate copy which shall be
34 given to the person paying the advance fee at the time of payment of
35 the advance fee, and (D) include such other specifications as the
36 commissioner may by regulation prescribe.

37 (e) An agreement under subsection (c) of this section that does not
38 meet the requirements of subsection (d) of this section shall be
39 voidable at the election of the person paying the advance fee.

40 (f) (1) No mortgage lender or first mortgage broker required to be
41 licensed pursuant to sections 36a-485 to 36a-498a, inclusive, shall enter
42 into an agreement with or otherwise require any person to pay the
43 mortgage lender or first mortgage broker for any fee, commission or
44 other valuable consideration lost as a result of such person failing to
45 consummate a first mortgage loan, provided the mortgage lender or
46 first mortgage broker may collect such fee, commission or
47 consideration as an advance fee subject to the requirements of this
48 section.

49 (2) No first mortgage broker required to be licensed pursuant to
50 sections 36a-485 to 36a-498a, inclusive, shall enter into an agreement

51 with or otherwise require any person to pay the first mortgage broker
52 any fee, commission or other valuable consideration for the
53 prepayment of the principal of a first mortgage loan by such person
54 before the date on which the principal is due.

55 (g) (1) For the purposes of this subsection:

56 (A) "Unfair or deceptive act or practice" means (i) the failure to
57 clearly and conspicuously state in the initial phase of the solicitation
58 that the solicitor is not affiliated with the lender or broker with which
59 the consumer initially applied, (ii) the failure to clearly and
60 conspicuously state in the initial phase of the solicitation that the
61 solicitation is based on personal information about the consumer that
62 was purchased, directly or indirectly, from a consumer reporting
63 agency without the knowledge or permission of the lender or broker
64 with which the consumer initially applied, (iii) the failure in the initial
65 solicitation to comply with the provisions of the federal Fair Credit
66 Reporting Act relating to prescreening solicitations that use consumer
67 reports, including the requirement to make a firm offer of credit to the
68 consumer, (iv) knowingly or negligently using information from a
69 mortgage trigger lead (I) to solicit consumers who have opted out of
70 prescreened offers of credit under the federal Fair Credit Reporting
71 Act, or (II) to place telephone calls to consumers who have placed their
72 contact information on a federal or state Do Not Call list, or (v) any
73 unfair or deceptive trade practice under the Unfair Trade Practices Act,
74 chapter 735a; and

75 (B) "Mortgage trigger lead" means a consumer report obtained
76 pursuant to Section 604 (c)(1)(B) of the federal Fair Credit Reporting
77 Act, 15 USC 1681b, where the issuance of the report is triggered by an
78 inquiry made with a consumer reporting agency in response to an
79 application for credit. "Mortgage trigger lead" does not include a
80 consumer report obtained by a lender that holds or services existing
81 indebtedness of the applicant who is the subject of the report.

82 (2) No mortgage lender or first mortgage broker shall engage in an

83 unfair or deceptive act or practice in soliciting an application for a first
84 mortgage loan when such solicitation is based, in whole or in part, on
85 information contained in a mortgage trigger lead. Any violation of this
86 subsection shall be deemed an unfair or deceptive trade practice under
87 subsection (a) of section 42-110b.

88 Sec. 2. Section 36a-521 of the general statutes is repealed and the
89 following is substituted in lieu thereof (*Effective October 1, 2007*):

90 (a) No person engaged in the secondary mortgage loan business in
91 this state as a mortgage lender, or a secondary mortgage broker,
92 including any licensee under sections 36a-510 to 36a-524, inclusive, and
93 any person who is exempt from licensing under section 36a-512, may
94 (1) charge, impose or cause to be paid, directly or indirectly, in
95 connection with any secondary mortgage loan transaction, prepaid
96 finance charges that exceed in the aggregate eight per cent of the
97 principal amount of the loan, or (2) include in the loan agreement
98 under which prepaid finance charges have been assessed any
99 provision which permits the mortgage lender to demand payment of
100 the entire loan balance prior to the scheduled maturity, except that
101 such loan agreement may contain a provision which permits the
102 mortgage lender to demand payment of the entire loan balance if any
103 scheduled installment is in default for more than sixty days or if any
104 condition of default set forth in the mortgage note exists. For the
105 purposes of this section, "prepaid finance charge" has the meaning
106 given to that term in section 36a-746a.

107 (b) Any mortgage lender who fails to comply with the provisions of
108 this section shall be liable to the borrower in an amount equal to the
109 sum of: (1) The amount by which the total of all prepaid finance
110 charges exceeds eight per cent of the principal amount of the loan; (2)
111 eight per cent of the principal amount of the loan or two thousand five
112 hundred dollars, whichever is less; and (3) the costs incurred by the
113 borrower in bringing an action under this section, including reasonable
114 attorney's fees, as determined by the court, provided no such mortgage
115 lender shall be liable for more than the amount specified in this

116 subsection in a secondary mortgage loan transaction involving more
117 than one borrower.

118 (c) Except as provided in subsection (e) of this section, every
119 advance fee paid or given, directly or indirectly, to a mortgage lender
120 or secondary mortgage broker required to be licensed pursuant to
121 sections 36a-510 to 36a-524, inclusive, shall be refundable.

122 (d) No originator required to be registered pursuant to sections 36a-
123 510 to 36a-524, inclusive, shall accept payment of any advance fee
124 except an advance fee on behalf of a licensee. Nothing in this
125 subsection shall be construed as prohibiting the licensee from paying
126 an originator all or part of an advance fee, provided such advance fee
127 paid is not refundable under this section.

128 (e) Subsection (c) of this section shall not apply if: (1) The person
129 providing the advance fee and the licensee agree, in writing, that the
130 advance fee shall not be refundable, in whole or in part; and (2) the
131 written agreement complies in all respects with the provisions of
132 subsection (f) of this section.

133 (f) An agreement under subsection (e) of this section shall meet all
134 of the following requirements to be valid and enforceable: (1) The
135 agreement shall be dated, signed by both parties, and be executed
136 prior to the payment of any advance fee; (2) the agreement shall
137 expressly state the total advance fee required to be paid and any
138 amount of the advance fee that shall not be refundable; (3) the
139 agreement shall clearly and conspicuously state any conditions under
140 which the advance fee will be retained by the licensee; (4) the term
141 "nonrefundable" shall be used to describe each advance fee or portion
142 thereof to which the term is applicable and shall appear in boldface
143 type in the agreement each time it is used; and (5) the form of the
144 agreement shall (A) be separate from any other forms, contracts or
145 applications utilized by the licensee, (B) contain a heading printed in a
146 size equal to at least ten-point boldface type that shall title the form
147 "AGREEMENT CONCERNING NONREFUNDABILITY OF

148 ADVANCE FEE", (C) provide for a duplicate copy, which shall be
149 given to the person paying the advance fee at the time of payment of
150 the advance fee, and (D) include such other specifications as the
151 commissioner may by regulation prescribe.

152 (g) An agreement under subsection (e) of this section that does not
153 meet the requirements of subsection (f) of this section shall be voidable
154 at the election of the person paying the advance fee.

155 (h) (1) No mortgage lender or secondary mortgage broker required
156 to be licensed pursuant to sections 36a-510 to 36a-524, inclusive, shall
157 enter into an agreement with or otherwise require any person to pay
158 the mortgage lender or secondary mortgage broker for any fee,
159 commission or other valuable consideration lost as a result of such
160 person failing to consummate a secondary mortgage loan, provided
161 the mortgage lender or secondary mortgage broker may collect such
162 fee, commission or consideration as an advance fee subject to the
163 requirements of this section.

164 (2) No secondary mortgage broker required to be licensed pursuant
165 to sections 36a-510 to 36a-524, inclusive, shall enter into an agreement
166 with or otherwise require any person to pay the secondary mortgage
167 broker any fee, commission or other valuable consideration for the
168 prepayment of the principal of a secondary mortgage loan by such
169 person before the date on which the principal is due.

170 (i) (1) For the purposes of this subsection:

171 (A) "Unfair or deceptive act or practice" means (i) the failure to
172 clearly and conspicuously state in the initial phase of the solicitation
173 that the solicitor is not affiliated with the lender or broker with which
174 the consumer initially applied, (ii) the failure to clearly and
175 conspicuously state in the initial phase of the solicitation that the
176 solicitation is based on personal information about the consumer that
177 was purchased, directly or indirectly, from a consumer reporting
178 agency without the knowledge or permission of the lender or broker
179 with which the consumer initially applied, (iii) the failure in the initial

180 solicitation to comply with the provisions of the federal Fair Credit
181 Reporting Act relating to prescreening solicitations that use consumer
182 reports, including the requirement to make a firm offer of credit to the
183 consumer, (iv) knowingly or negligently using information from a
184 mortgage trigger lead (I) to solicit consumers who have opted out of
185 prescreened offers of credit under the federal Fair Credit Reporting
186 Act, or (II) to place telephone calls to consumers who have placed their
187 contact information on a federal or state Do Not Call list, or (v) any
188 unfair or deceptive trade practice under the Unfair Trade Practices Act,
189 chapter 735a; and

190 (B) "Mortgage trigger lead" means a consumer report obtained
191 pursuant to Section 604(c)(1)(B) of the federal Fair Credit Reporting
192 Act, 15 USC 1681b, where the issuance of the report is triggered by an
193 inquiry made with a consumer reporting agency in response to an
194 application for credit. "Mortgage trigger lead" does not include a
195 consumer report obtained by a lender that holds or services existing
196 indebtedness of the applicant who is the subject of the report.

197 (2) No mortgage lender or secondary mortgage broker shall engage
198 in any unfair or deceptive act or practice in soliciting an application for
199 a secondary mortgage loan when such solicitation is based, in whole or
200 in part, on information contained in a mortgage trigger lead. Any
201 violation of this subsection shall be deemed an unfair or deceptive
202 trade practice under subsection (a) of section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	36a-498
Sec. 2	October 1, 2007	36a-521

JUD *Joint Favorable Subst.*