



# House of Representatives

General Assembly

**File No. 114**

February Session, 2008

Substitute House Bill No. 5577

*House of Representatives, March 20, 2008*

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING RESPONSIBLE LENDING AND ECONOMIC SECURITY.***

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

1 Section 1. (NEW) (*Effective July 1, 2008*) As used in sections 1 to 8,  
2 inclusive, of this act:

3 (1) "Authority" means the Department of Economic and Community  
4 Development;

5 (2) "Commissioner" means the Banking Commissioner and, with  
6 respect to any function of the commissioner, includes any person  
7 authorized or designated by the commissioner to carry out that  
8 function;

9 (3) "Mortgage assistance program committee" or "committee" means  
10 the committee established in section 2 of this act;

11 (4) "Mortgage" means a mortgage deed or other instrument which  
12 constitutes a first or secondary consensual lien upon any interest in

13 one to four family residential real property located in this state, which  
14 is, or when the loan is made, intended to be occupied by the borrower  
15 as a principal residence. It includes, but is not limited to, a nonprime  
16 home loan, as defined in section 9 of this act;

17 (5) "Mortgagor" means the owner-occupant of one or four family  
18 residential real property located in this state who is also the borrower  
19 under a mortgage encumbering such real property;

20 (6) "Mortgagee" means the original lender under a mortgage, or its  
21 successors, or an assignee of a mortgage;

22 (7) "REAL program" or "REfinance to an Affordable Loan program"  
23 means the loan program established pursuant to subsection (d) of  
24 section 2 of this act;

25 (8) "HERO program" or "Homeowner's Equity Recovery  
26 Opportunity Loan program" means the loan program established  
27 pursuant to subsection (e) of section 2 of this act; and

28 (9) "EMAP" or "Emergency Mortgage Assistance program" means  
29 the loan program established pursuant to subsection (f) of section 2 of  
30 this act.

31 Sec. 2. (NEW) (*Effective July 1, 2008*) (a) There is established a  
32 mortgage assistance program committee. The mortgage assistance  
33 program committee shall be comprised of ten members. One member  
34 shall be appointed by each of the following: (1) The Governor, (2) the  
35 speaker of the House of Representatives; (3) the majority leader of the  
36 House of Representatives; (4) the minority leader of the House of  
37 Representatives; (5) the president pro tempore of the Senate; (6) the  
38 majority leader of the Senate; (7) the minority leader of the Senate; (8)  
39 the Banking Commissioner; (9) the House of Representatives  
40 chairperson of the joint standing committee of the General Assembly  
41 having cognizance of matters relating to banks; and (10) the Senate  
42 chairperson of the joint standing committee of the General Assembly  
43 having cognizance of matters relating to banks. The mortgage

44 assistance program committee members shall elect a chairperson from  
45 among the members of the committee.

46 (b) The mortgage assistance program committee shall develop  
47 written standards for determining eligibility for mortgage assistance  
48 under sections 1 to 4, inclusive, of this act and such procedures as  
49 necessary to otherwise implement the provisions of sections 1 to 6,  
50 inclusive, of this act. Such standards shall, at a minimum, establish: (1)  
51 The standards for qualifying mortgages and mortgagors for mortgage  
52 assistance available under sections 1 to 4, inclusive, of this act; (2) the  
53 scope and nature of the mortgage assistance available under sections 1  
54 to 4, inclusive, of this act; and (3) the terms and conditions under  
55 which the authority will provide, and be repaid for, mortgage  
56 assistance under sections 1 to 4, inclusive, of this act. Procedures  
57 necessary to implement the provisions of sections 1 to 6, inclusive, of  
58 this act shall, at a minimum, include development of a form for  
59 application for relief and procedures for the committee's determination  
60 of eligibility. On or before October 1, 2008, the standards and  
61 procedures to be developed by the committee under this subsection  
62 shall be adopted by the authority in regulations in accordance with  
63 chapter 54 of the general statutes.

64 (c) The committee shall evaluate, utilizing the standards and  
65 procedures developed by the committee pursuant to subsection (b) of  
66 this section, the eligibility of applicants for mortgage assistance in the  
67 following programs in the following order: (1) The REfinance to an  
68 Affordable Loan program or REAL program as described in subsection  
69 (d) of this section; (2) the Homeowners' Equity Recovery Opportunity  
70 Loan program or HERO program, as described in subsection (e) of this  
71 section; and (3) the emergency mortgage assistance program or EMAP,  
72 as described in subsection (f) of this section.

73 (d) The committee shall develop and implement the REAL program  
74 in accordance with this subsection. Such program shall offer thirty-  
75 year fixed rates at one-quarter of one per cent above the Connecticut  
76 Housing Finance Authority's regular rate and shall combine one

77 hundred per cent financing with flexible credit underwriting. The  
78 committee shall be responsible for developing written standards for  
79 determining eligibility for refinancing under the program and such  
80 procedures as necessary to otherwise implement the provisions of this  
81 subsection in accordance with subsection (b) of this section. All  
82 borrowers approved for the program shall attend in-person financial  
83 counseling at a committee-approved agency. The committee shall  
84 make refinancing available in accordance with the following criteria:

85 (1) The combined gross annual income of all borrowers may not  
86 exceed one hundred twenty thousand dollars, unless certain  
87 exceptions specified by the committee apply;

88 (2) A borrower may be no more than fifty-nine days past due on his  
89 or her existing mortgage;

90 (3) A borrower has a credit score of at least six hundred twenty or  
91 meet all of the following conditions: (A) The borrower's mortgage  
92 payment has been adjusted in the past twelve months to a higher  
93 interest rate or a fully amortized payment and (i) the borrower has  
94 made no more than two, thirty-day late payments since the  
95 adjustment, and (ii) the borrower's mortgage payment history twelve  
96 months prior to the adjustment shows no history of late payments; and  
97 (B) the borrower's credit history of debt other than the mortgage shows  
98 no more than three, thirty-day late payments twelve months prior to  
99 the adjustment of the mortgage;

100 (4) The borrower with a credit score of six hundred twenty or higher  
101 may borrow up to one hundred per cent of his or her home's value  
102 based upon a current appraisal, and a borrower with a credit score of  
103 less than six hundred twenty may borrow up to ninety-five per cent of  
104 his or her home's value;

105 (5) The REAL loan may be used to finance items such as subordinate  
106 mortgages, closing costs, prepayment penalties, delinquent property  
107 taxes and arrearages that have occurred within the past twelve months  
108 after the loan reset to a higher monthly payment amount;

109 (6) For a borrower with a credit score of six hundred twenty or  
110 higher, the borrower's total debt costs may not be more than fifty per  
111 cent of his or her total gross monthly income, and for a borrower with  
112 a credit score of less than six hundred twenty, the total debt costs may  
113 not be more than forty-five per cent of his or her total gross monthly  
114 income. For purposes of this subdivision, "total debt costs" includes,  
115 but is not limited to, credit cards, motor vehicle loans, installment  
116 loans, REAL program mortgage payments and student loans.

117 (e) (1) The committee shall develop and implement the HERO  
118 program in accordance with this subsection. Such program shall offer  
119 up to one hundred per cent financing through the following  
120 mechanism: The authority shall purchase loans directly from lenders  
121 and then place borrowers on an affordable repayment plan. The  
122 committee shall be responsible for developing written standards for  
123 determining eligibility for refinancing under this program and such  
124 procedures as necessary to otherwise implement the provisions of this  
125 subsection in accordance with subsection (b) of this section. The  
126 committee shall make the HERO program available to eligible  
127 applicants who are not otherwise eligible for the REAL program  
128 described in subsection (d) of this section or another mortgage  
129 refinance product available in the general market due to credit issues  
130 or owing more than the home's current appraised value. All borrowers  
131 approved for the program shall attend in-person financial counseling  
132 at a committee-approved agency.

133 (2) A HERO loan (A) shall provide a fixed-rate mortgage for up to  
134 thirty years in an amount up to one hundred per cent of the current  
135 value of the borrower's home; (B) shall provide an interest rate at one-  
136 quarter of one per cent above the Connecticut Housing Finance  
137 Authority's regular rate; (C) shall provide a loan that is serviced by the  
138 authority; (D) shall have property taxes and insurance, including  
139 mortgage insurance, homeowner's insurance and, if applicable, flood  
140 insurance included in the borrower's monthly payment amount; and  
141 (E) may be used to pay off the current mortgage debt, closing costs,  
142 prepayment penalties and delinquent property taxes.

143 (3) The committee shall make a HERO loan available in accordance  
144 with the following criteria: (A) The combined gross annual income of  
145 all borrowers may not exceed one hundred twenty thousand dollars,  
146 unless certain exceptions specified by the committee apply; (B) the  
147 borrower has made an effort to meet his or her financial obligations to  
148 the best of his or her ability; (C) the borrower has sufficient and stable  
149 income to support timely repayment of the HERO loan in regular,  
150 monthly installments and the borrower agrees to make monthly  
151 mortgage payments by automatic payment directly from his or her  
152 bank account; (D) the borrower has legal title to the mortgaged  
153 property and resides in it as his or her permanent residence; (E) if the  
154 borrower has stopped making monthly payments, he or she is able to  
155 account for his or her cash flow by showing how he or she escrowed,  
156 saved or redirected those funds; and (F) the HERO loan shall be in first  
157 lien position.

158 (f) The committee shall develop and implement EMAP in  
159 accordance with this subsection. Such program shall offer at a  
160 minimum, two types of mortgage assistance loans: (1) Noncontinuing  
161 mortgage assistance loans, in which a mortgage is brought current to a  
162 specific date and the mortgagor is responsible for making all  
163 subsequent payments to the mortgagee along with any repayment to  
164 EMAP; and (2) continuing mortgage assistance loans, in which the  
165 mortgagor remits the mortgagor's designated monthly payment to  
166 EMAP, and the authority combines the amount sent by the mortgagor  
167 with EMAP funds and forwards the full monthly mortgage payment  
168 directly to the mortgagee on the mortgagor's behalf. The committee  
169 shall ensure that EMAP includes provision of no-interest loans and  
170 prepayment penalty loans. A prepayment penalty loan made by the  
171 authority shall permit the authority to secure a secondary lien on the  
172 property securing the mortgagor's new loan. The committee shall be  
173 responsible for developing written standards for determining  
174 eligibility for refinancing under this program and such procedures as  
175 necessary to otherwise implement the provisions of this subsection in  
176 accordance with subsection (b) of this section. EMAP shall be available  
177 to eligible applicants who are not otherwise eligible for the REAL

178 program described in subsection (d) of this section or the HERO  
179 program described in subsection (e) of this section. All borrowers  
180 approved for the program shall attend in-person financial counseling  
181 at a committee-approved agency. For the purposes of this subsection,  
182 "prepayment penalty loans" mean loans that involve payment by the  
183 authority of any prepayment penalties that a mortgagor may incur in  
184 order to terminate its mortgage in connection with the mortgagor  
185 securing a more favorable loan.

186 (g) The committee shall establish, no later than October 1, 2008,  
187 hotlines or other programs or procedures to provide information about  
188 the mortgage assistance programs established by sections 1 to 4,  
189 inclusive, of this act, and to assist eligible mortgagors to renegotiate  
190 mortgages, to engage foreclosure consultants, or to provide for any  
191 other assistance that the committee deems appropriate.

192 (h) The mortgage assistance programs described in sections 1 to 4,  
193 inclusive, of this act shall be funded by state bonding and repayment  
194 of loans provided by such programs.

195 Sec. 3. (NEW) (*Effective July 1, 2008*) (a) On and after October 1, 2008,  
196 the committee shall receive applications for, and make determinations  
197 of eligibility for, REAL program, HERO program and EMAP. The  
198 committee shall make its determination of eligibility no later than  
199 thirty calendar days after receipt of the mortgagor's application.  
200 Approved loans shall move to closing no later than forty-five days  
201 after the committee's determination of loan eligibility. No mortgage  
202 assistance pursuant to said programs shall be provided unless the  
203 committee finds that the committee's standards for eligibility are  
204 satisfied.

205 (b) The mortgagor shall apply for mortgage assistance pursuant to  
206 section 2 of this act on the form prescribed by the committee. The  
207 mortgagor shall complete and sign the application subject to the  
208 penalty for false statement under section 53a-157b of the general  
209 statutes.

210 (c) The mortgagor shall provide the committee with full disclosure  
211 of all assets and liabilities, whether singly or jointly held, and all  
212 household income regardless of source.

213 Sec. 4. (NEW) (*Effective July 1, 2008*) (a) If the committee determines  
214 that a mortgagor is eligible for REAL program, HERO program or  
215 EMAP, the committee shall authorize payments to be made to the  
216 mortgagor by the authority in accordance with the applicable program.

217 (b) Any mortgagor who misrepresents any financial or other  
218 material information in conjunction with the filing of an application for  
219 REAL program, HERO program or EMAP, or any modification of such  
220 assistance, may be denied assistance and required to immediately  
221 repay any amount of assistance already provided.

222 (c) The authority may take any remedial action permitted under law  
223 or equity that it deems appropriate to recover mortgage assistance  
224 provided pursuant to section 2 of this act when the mortgagor fails to  
225 repay such assistance under the terms and conditions established by  
226 the committee.

227 Sec. 5. (NEW) (*Effective July 1, 2008*) (a) On and after October 1, 2008,  
228 a mortgagee who desires to foreclose upon a mortgage shall give  
229 notice to the mortgagor by registered, or certified mail, postage  
230 prepaid at the address of the property that is secured by the mortgage.  
231 No such mortgagee may commence a foreclosure of a mortgage for  
232 thirty days after mailing such notice. Such notice shall, at a minimum,  
233 advise the mortgagor of the mortgagor's delinquency or other default  
234 under the mortgage and shall advise the mortgagor of its right to  
235 appeal to the authority for assistance under the REAL program, the  
236 HERO program, or EMAP. The contents of the notice required by this  
237 subsection shall be determined by the committee. Mortgagors who  
238 desire to apply for assistance pursuant to said programs shall meet  
239 with designated counseling agencies no later than thirty days after  
240 receipt of the notice or, if delivery of the notice was refused, no later  
241 than thirty days after the date delivery of the notice was refused,  
242 whichever is earlier, in order to begin the application process. The



243 counseling agency shall prepare the application and submit the initial  
244 paperwork to the authority. Foreclosure actions by mortgagees shall  
245 cease as long as the mortgagor files a timely application with the  
246 authority in accordance with this section.

247 (b) A mortgagor who (1) received notice under subsection (a) of this  
248 section, (2) applied to the authority for relief under sections 1 to 4,  
249 inclusive, of this act, and (3) was denied such relief by the authority,  
250 shall have a right to seek a continuing moratorium of the foreclosure  
251 action pursuant to this subsection and subsection (c) of this section.  
252 Such right shall be exercised by the mortgagor by submission of an  
253 application to the commissioner under subsection (c) of this section no  
254 later than thirty days after the postmark date on the notice of the  
255 authority's denial of the mortgagor's request for mortgage assistance  
256 pursuant to section 2 of this act.

257 (c) On or before October 1, 2008, the commissioner shall adopt  
258 regulations in accordance with chapter 54 of the general statutes to  
259 establish criteria for the granting of foreclosure action moratoriums.  
260 The commissioner shall grant requests by mortgagors for such  
261 moratoriums on a case-by-case basis.

262 (d) If the commissioner grants the mortgagor's request for a  
263 moratorium, the commissioner shall notify the mortgagor and the  
264 mortgagee in writing, setting forth the basis for the commissioner's  
265 determination and the term of the moratorium, and the mortgagee  
266 shall not commence a foreclosure action until the end of the term of the  
267 moratorium as stated in the notice. The term of the moratorium shall  
268 not exceed six months. In addition, the mortgagee and mortgagor shall  
269 be required by the terms of the commissioner's notice to meet no later  
270 than ninety days after receipt of the commissioner's notice to attempt  
271 to renegotiate the terms of the loan. If the mortgagor and the  
272 mortgagee are unable to renegotiate the terms of the loan during the  
273 period of the moratorium, upon the lapse of moratorium, the  
274 mortgagee may take any legal action to enforce the mortgage without  
275 further restrictions or requirements.

276 (e) If the commissioner denies the mortgagor's request for a  
277 moratorium, the mortgagee may take any legal action to enforce the  
278 mortgage without further restrictions or requirements.

279 Sec. 6. (NEW) (*Effective July 1, 2008*) The Department of Banking  
280 shall develop a program, using funds available to the authority  
281 pursuant to section 8 of this act and transferred by the authority to the  
282 Department of Banking for the purposes of implementing this section,  
283 to purchase foreclosed residential real property located in this state for  
284 resale for the purposes of providing affordable and supportive  
285 housing, provided the Department of Banking shall only purchase  
286 such foreclosed residential real property if (1) the property is sold at a  
287 discount, and (2) the transfer of funds, the purchase of the property  
288 and the resale of the property are approved in advance by the  
289 mortgage assistance committee established by section 2 of this act.

290 Sec. 7. (NEW) (*Effective July 1, 2008*) All moneys received by the  
291 authority under sections 1 to 6, inclusive, of this act shall be deposited  
292 in such funds or accounts as the authority may establish from time to  
293 time for such purpose and be used solely for the purposes of the  
294 programs established pursuant to sections 1 to 6, inclusive, of this act.

295 Sec. 8. (*Effective July 1, 2008*) (a) The Connecticut Housing Finance  
296 Authority shall transfer to the authority forty million dollars of the  
297 Connecticut Housing Finance Authority's proceeds from bond sales  
298 prior to 1986. The authority shall use the forty million dollars  
299 transferred to it by the Connecticut Housing Finance Authority for the  
300 purpose of funding the REAL program and the HERO program  
301 established in section 2 of this act.

302 (b) For the purposes described in subsection (c) of this section, the  
303 State Bond Commission shall have the power, from time to time, to  
304 authorize the issuance of bonds of the state in one or more series and  
305 in principal amounts not exceeding in the aggregate one hundred  
306 million dollars, provided (1) thirty-five million dollars shall be  
307 effective July 1, 2008, (2) thirty-five million dollars shall be effective  
308 July 1, 2009, (3) fifteen million dollars shall be effective July 1, 2010,

309 and (4) fifteen million dollars shall be effective July 1, 2012.

310 (c) The proceeds of the sale of said bonds, to the extent of the  
311 amount stated in subsection (b) of this section, shall be used by the  
312 authority for EMAP established in section 2 of this act and for the  
313 program described in section 6 of this act.

314 (d) All provisions of section 3-20 of the general statutes, or the  
315 exercise of any right or power granted thereby, which are not  
316 inconsistent with the provisions of this section are hereby adopted and  
317 shall apply to all bonds authorized by the State Bond Commission  
318 pursuant to this section, and temporary notes in anticipation of the  
319 money to be derived from the sale of any such bonds so authorized  
320 may be issued in accordance with said section 3-20 and from time to  
321 time renewed. Such bonds shall mature at such time or times not  
322 exceeding twenty years from their respective dates as may be provided  
323 in or pursuant to the resolution or resolutions of the State Bond  
324 Commission authorizing such bonds. None of said bonds shall be  
325 authorized except upon a finding by the State Bond Commission that  
326 there has been filed with it a request for such authorization which is  
327 signed by or on behalf of the Secretary of the Office of Policy and  
328 Management and states such terms and conditions as said commission,  
329 in its discretion, may require. Said bonds issued pursuant to this  
330 section shall be general obligations of the state and the full faith and  
331 credit of the state of Connecticut are pledged for the payment of the  
332 principal of and interest on said bonds as the same become due, and  
333 accordingly and as part of the contract of the state with the holders of  
334 said bonds, appropriation of all amounts necessary for punctual  
335 payment of such principal and interest is hereby made, and the State  
336 Treasurer shall pay such principal and interest as the same become  
337 due.

338 Sec. 9. (NEW) (*Effective July 1, 2008*) (a) As used in this section:

339 (1) "Commissioner" means the Banking Commissioner and, with  
340 respect to any function of the commissioner, includes any person  
341 authorized or designated by the commissioner to carry out that

342 function;

343 (2) "Lender" means any person or entity originating a mortgage who  
344 is licensed by the Department of Banking under chapter 668 of the  
345 general statutes or the 2008 supplement to the general statutes, or their  
346 successors or assigns;

347 (3) "Mortgage broker" means any person who (A) for a fee,  
348 commission or other valuable consideration, negotiates, solicits,  
349 arranges, places or finds a mortgage, and (B) is licensed by the  
350 Department of Banking under chapter 668 of the general statutes or the  
351 2008 supplement to the general statutes, or their successors or assigns;

352 (4) "Nonprime home loan" means any loan or extension of credit,  
353 excluding an open-end line of credit subject to 12 CFR 226.5b, as  
354 amended from time to time, and further excluding a reverse mortgage  
355 transaction, as defined in 12 CFR 226.33, as amended from time to  
356 time:

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

358 (B) The proceeds of which are to be used primarily for personal  
359 family or household purposes;

360 (C) In which the loan is secured by a mortgage upon any interest in  
361 one to four family residential property located in this state which is, or  
362 when the loan is made, intended to be used or occupied by the  
363 borrower as a principal residence;

364 (D) In which the principal amount of the loan does not exceed the  
365 then current conforming loan limit, as established from time to time by  
366 the Federal National Mortgage Association; and

367 (E) In which all of the following apply:

368 (i) The difference between the APR for the loan or extension of  
369 credit and the yield on United States Treasury securities having  
370 comparable periods of maturity is either equal to or greater than (I)

371 three percentage points, if the loan is a first mortgage loan, or (II) five  
372 percentage points, if the loan is a secondary mortgage loan. For  
373 purposes of such calculation, without regard to whether the loan is  
374 subject to or reportable under the provisions of the federal Home  
375 Mortgage Disclosure Act, 12 USC 2801 et. seq., the difference between  
376 the APR and the yield on United States Treasury securities having  
377 comparable periods of maturity shall be determined using the same  
378 procedures and calculation methods applicable to loans that are  
379 subject to the reporting requirement of the federal Home Mortgage  
380 Disclosure Act, as those procedures and calculation methods are  
381 amended from time to time, provided the yield on United States  
382 Treasury securities is determined as of the fifteenth day of the month  
383 prior to the application for the loan; and

384 (ii) The difference between the APR for the loan and the  
385 conventional mortgage rate is either equal to or greater than (I) one  
386 and three-quarters percentage points, if the loan is a first mortgage  
387 loan, or (II) three and three-quarters percentage points if the loan is a  
388 secondary mortgage loan. For purposes of such calculation, the  
389 "conventional mortgage rate" means the most recent daily contract  
390 interest rate on commitments for fixed-rate mortgages published by  
391 the board of governors of the federal reserve system in its statistical  
392 release H.15, or any publication that may supersede it, during the  
393 week in which the interest rate for the loan is set. For the purpose of  
394 subparagraphs (E)(i) and (ii) of this subdivision, the dollar amount of  
395 any bona fide discount points need not be included when calculating  
396 the APR;

397 (5) "Residential property" means improved real property used or  
398 occupied, or intended to be used or occupied, for residential purposes;

399 (6) "First mortgage loan" means a loan or an extension of credit,  
400 including, but not limited to, an extension of credit pursuant to a  
401 contract or an assigned contract for the sale of goods or services, made  
402 to a natural person, the proceeds of which are to be used primarily for  
403 personal, family or household purposes, and that is secured by a first

404 mortgage upon any interest in one to four family owner-occupied  
405 residential property located in this state that is not subject to any prior  
406 mortgages and the renewal or refinancing of such a loan;

407 (7) "Secondary mortgage loan" means: (A) A loan or an extension of  
408 credit, including, but not limited to, an extension of credit pursuant to  
409 a contract or an assigned contract for the sale of goods or services,  
410 made to a natural person, the proceeds of which are to be used  
411 primarily for personal, family or household purposes, and that is  
412 secured in whole or in part by a mortgage upon any interest in one to  
413 four family owner-occupied residential property located in this state,  
414 provided such property is subject to one or more prior mortgages, and  
415 (B) the renewal or refinancing of any existing loan or extension of  
416 credit described in subparagraph (A) of this subdivision;

417 (8) "Bona fide discount points" means the points that a borrower  
418 agrees to pay for the express purpose of reducing the interest rate  
419 applicable to a mortgage loan and that results in a bona fide reduction  
420 of the interest rate.

421 (b) Lenders and mortgage brokers shall have a fiduciary duty to  
422 borrowers. The fiduciary duty to borrowers of a nonprime home loan  
423 shall include an obligation to ensure that borrowers have sufficient  
424 information to clearly understand the terms of the nonprime home  
425 loan and the associated risks in order to make an informed nonprime  
426 home loan product choice. The fiduciary duty to borrowers of a  
427 nonprime home loan shall include, but shall not be limited to, the  
428 duties and obligations imposed by this section.

429 (c) The Banking Commissioner shall adopt regulations, in  
430 accordance with the provisions of chapter 54 of the general statutes, to  
431 establish: (1) A suitability standard that lenders and mortgage brokers  
432 shall use to determine which nonprime home loan products are most  
433 suitable for borrowers; and (2) the minimum verification and  
434 documentation requirements for qualifying borrowers for a nonprime  
435 home loan. Such regulations shall include, but shall not be limited to,  
436 a mandate that lenders verify income by the best means of

437 documentation available, including, but not limited to, payroll  
438 receipts, bank records, tax returns or other similar reliable documents,  
439 and that lenders consider the reasonable ability of the borrower to  
440 repay the nonprime home loan (A) according to a fully amortizing  
441 payment schedule, and (B) taking into account all requirements of the  
442 loan, including, but not limited to, principal, interest, real estate taxes,  
443 insurance, assessments, any required homeowner or condominium  
444 fees, and any subordinate mortgages including those that will be made  
445 contemporaneously to the same borrower.

446 (d) When offering a nonprime home loan, lenders shall notify all  
447 potential borrowers in writing that they are required to attend a course  
448 or courses accredited by the Department of Banking on nonprime  
449 home loans and provide evidence of completion of such course before  
450 the mortgage may be executed. The commissioner shall adopt  
451 regulations, in accordance with the provisions of chapter 54 of the  
452 general statutes, to provide procedures for accrediting the courses  
453 required by this section and for issuance of written certificates of  
454 completion by entities providing such accredited courses.

455 (e) A lender that offers a nonprime home loan shall give  
456 mortgagors a notice which reads as follows:

457 "NOTICE TO BORROWER

458 If you obtain this loan, the lender will have a mortgage on your  
459 home. You could lose your home and any money you put into it if you  
460 do not meet your obligations under the loan.

461 Mortgage loan rates and closing costs and fees vary based on many  
462 factors, including your particular credit and financial circumstances,  
463 your employment history, the loan-to-value requested and the type of  
464 property that will secure your loan. The loan rate and fees could also  
465 vary based on which lender or broker you select. As an obligor, you  
466 should shop around and compare loan rates and fees. You should also  
467 consider consulting a qualified independent credit counselor or other  
468 experienced financial advisor regarding the rate, fees and provisions of

469 this mortgage loan before you proceed. A list of qualified counselors is  
470 available by contacting the Department of Economic and Community  
471 Development.

472 You are not required to complete this loan agreement merely  
473 because you have received these disclosures or have signed a loan  
474 application.

475 Remember, property taxes and homeowner's insurance are your  
476 responsibility. Not all lenders provide escrow services for these  
477 payments. You should ask your lender about these services. Also, your  
478 payments on existing debts contribute to your credit ratings. You  
479 should not accept any advice to ignore your regular payments to your  
480 existing creditors. The agency has determined that the list it will  
481 provide upon request will be the same list of counseling agencies as  
482 are approved to participate in the agency's mortgage assistance  
483 program."

484 (f) A lender shall not make a nonprime home loan unless:

485 (1) The lender documents, to the extent required by and in the form  
486 required by the regulations adopted by the commissioner pursuant to  
487 subsection (c) of this section, that the mortgagor qualifies for the loan  
488 at its highest interest rate over the term of the loan;

489 (2) The lender requires and collects the monthly escrow of property  
490 taxes, insurance, and homeowners or condominium fees;

491 (3) The potential mortgagor completes the required courses under  
492 subsection (d) of this section, as evidenced by certificates of  
493 completion; and

494 (4) The lender discloses to all potential borrowers a list of nonprofit  
495 housing counselors approved by the federal Department of Housing  
496 and Urban Development.

497 (g) A lender shall not offer a nonprime home loan that contains:



498 (1) A prepayment penalty provision;

499 (2) A provision that increases the interest rate after default; or

500 (3) A provision requiring a borrower, whether acting individually or  
501 on behalf of others similarly situated, to assert any claim or defense in  
502 a forum that: (A) Does not have to adhere to the rules of evidence; (B)  
503 does not have to apply the law as set forth in the general statutes or  
504 common law; (C) limits in any way any claim or defense the borrower  
505 may have; or (D) is less convenient, more costly, or more dilatory for  
506 the resolution of a dispute than a judicial forum established in this  
507 state where the borrower may otherwise properly bring a claim or  
508 defense.

509 (h) Any nonprime home loan executed in violation of this section  
510 shall be a breach of fiduciary duty and an unfair or deceptive trade  
511 practice under chapter 735a of the general statutes, unless:

512 (1) Not later than ninety days after the date of the loan closing and  
513 prior to the commencement of any action against the lender under this  
514 section, the borrower is notified by the lender of the compliance  
515 failure, the lender tenders appropriate restitution, and the lender  
516 offers, at the borrower's option, either to (A) make the nonprime home  
517 loan compliant with this section, or (B) change the terms of the  
518 mortgage in a manner beneficial to the borrower so that the mortgage  
519 will no longer be considered a nonprime home loan subject to the  
520 provisions of this section. A lender shall act within a reasonable period  
521 of time following the borrower's election of remedy.

522 (2) The compliance failure is not intentional and results from a bona  
523 fide error notwithstanding the maintenance of procedures reasonably  
524 adopted to avoid such errors, and not later than one hundred twenty  
525 days after the date of discovery of the compliance failure and prior to  
526 the commencement of any action against the lender under this section,  
527 the borrower is notified of the compliance failure, the lender tenders  
528 appropriate restitution, and the lender offers, at the borrower's option,  
529 either to (A) make the nonprime home loan comply with this section,

530 or (B) change the terms of the nonprime home loan in a manner  
531 beneficial to the borrower so that the mortgage will no longer be  
532 considered a nonprime home loan subject to the provisions of this  
533 section. A lender shall act within a reasonable period of time following  
534 the borrower's election of remedy. For the purposes of this  
535 subdivision, the phrase "bona fide error" includes, but is not limited to,  
536 a clerical, calculation, printing, computer malfunction or programming  
537 error, but does not include an error of legal judgment with respect to a  
538 person's obligations under this section.

539 Sec. 10. (NEW) (*Effective July 1, 2008*) As used in sections 10 to 15,  
540 inclusive, of this act:

541 (1) "Mortgage broker" means any person who (A) for a fee,  
542 commission or other valuable consideration, negotiates, solicits,  
543 arranges, places or finds a mortgage, and (B) is licensed by the  
544 Department of Banking under chapter 668 of the general statutes or the  
545 2008 supplement to the general statutes, or their successors or assigns;

546 (2) "Commissioner" means the Banking Commissioner and, with  
547 respect to any function of the commissioner, includes any person  
548 authorized or designated by the commissioner to carry out that  
549 function;

550 (3) "Lender" means any person or entity originating a mortgage who  
551 is licensed by the Department of Banking under chapter 668 of the  
552 general statutes or the 2008 supplement to the general statutes, or their  
553 successors or assigns; and

554 (4) "Mortgage" means a mortgage deed or other instrument that  
555 constitutes a first or secondary consensual lien upon any interest in  
556 one to four family residential real property located in this state, that is,  
557 or when the loan is made, intended to be occupied by the borrower as  
558 a principal residence. "Mortgage" includes, but is not limited to, a  
559 nonprime home loan, as defined in section 9 of this act.

560 Sec. 11. (NEW) (*Effective July 1, 2008*) (a) For the purposes of this

561 subsection, a "tangible benefit to the borrower" means: (1) Cash back at  
562 the closing of the refinanced mortgage, in the amount of no less than  
563 five per cent or more of the appraised value of the home securing the  
564 mortgage, or (2) a five per cent or more reduction in the borrower's  
565 monthly mortgage payment without a significant extension of the term  
566 of the loan. A lender shall not offer a refinanced mortgage unless the  
567 refinanced mortgage will provide a tangible benefit to the borrower. A  
568 lender shall not take any action that recommends or encourages a  
569 default on an existing mortgage or other debt prior to and in  
570 connection with the closing or planned closing of a new mortgage that  
571 refinances all or any portion of the existing loan or debt.

572 (b) A lender may not finance, directly or indirectly in connection  
573 with a mortgage, any credit life, credit disability, credit unemployment  
574 or credit property insurance or any other life or health insurance or  
575 any payments directly or indirectly for any debt cancellation or  
576 suspension agreement or contract, except that insurance premiums or  
577 debt cancellation or suspension fees calculated and paid on a monthly  
578 basis or through regularly scheduled periodic payments shall not be  
579 considered financed by the lender for the purposes of this subsection.

580 (c) If all defaults in connection with a residential mortgage are cured  
581 no later than ninety days after the initiation of any action to foreclose,  
582 the lender shall take steps as necessary to terminate the foreclosure  
583 proceeding or other action. The lender may require that the borrower  
584 pay any reasonable costs actually incurred by the lender before the  
585 curing of the default. The curing of the default reinstates the borrower  
586 to the same position as if the default had not occurred and nullifies, as  
587 of the date of the cure, any acceleration of any obligation under the  
588 security instrument or note arising from the default. For purposes of  
589 this subsection, "cure", "cured" or "curing" means payment of  
590 arrearages.

591 Sec. 12. (NEW) (*Effective July 1, 2008*) A mortgage broker shall: (1)  
592 Use reasonable care, skill and diligence in performing the broker's  
593 duties; (2) make reasonable efforts to secure a loan that is in the best

594 interests of the borrower considering all the circumstances, including,  
595 but not limited to, the rates, points, fees, charges, costs and product  
596 type; and (3) ensure that the cost of credit is appropriate considering  
597 the borrower's level of creditworthiness.

598 Sec. 13. (NEW) (*Effective July 1, 2008*) (a) For the purposes of this  
599 section, "yield spread premium" means any amount to be paid by the  
600 lender to the broker in connection with a mortgage.

601 (b) A mortgage broker shall clearly and conspicuously disclose to  
602 the borrower any yield spread premium in accordance with this  
603 subsection. In addition to providing the mortgagor with a copy of any  
604 written broker agreement, such disclosure shall be made in advance of  
605 the execution of a mortgage and shall:

606 (1) State the presence and amount of a yield spread premium;

607 (2) State the amount of money that the yield spread premium costs  
608 the borrower; and

609 (3) Be in writing in a separate document that complies with the  
610 plain language requirements set forth in section 42-152 of the general  
611 statutes.

612 Sec. 14. (NEW) (*Effective July 1, 2008*) (a) A mortgage broker shall not  
613 influence residential real estate appraisals. For the purposes of this  
614 section, "influence residential real estate appraisals" includes, but is not  
615 limited to: (1) Refusal, or intentional failure, to pay an appraiser for an  
616 appraisal that reflects a fair market value estimate that is less than the  
617 sale contract price; or (2) refusal, or intentional failure, to utilize, or  
618 encouraging other mortgage brokers not to utilize, an appraiser based  
619 solely on the fact that the appraiser provided an appraisal reflecting a  
620 fair market value estimate that was less than the sale contract price.

621 (b) The commissioner may, upon a verified complaint in writing of  
622 any person, if such complaint or such complaint together with  
623 evidence, documentary or otherwise, presented in connection with  
624 such complaint, make out a prima facie case of a violation of the

625 provisions of subsection (a) of this section, investigate the actions of a  
626 mortgage broker. If a mortgage broker violates the provisions of  
627 subsection (a) of this section, the commissioner may temporarily  
628 suspend or permanently revoke a license issued under the provisions  
629 of chapter 668 of the general statutes or the 2008 supplement to the  
630 general statutes after notice and hearing in accordance with section  
631 36a-24 and chapter 54 of the general statutes. In addition to or in lieu of  
632 such suspension or revocation, the commissioner may impose a civil  
633 penalty of not more than one thousand dollars for any violation of the  
634 provisions of subsection (a) of this section.

635       Sec. 15. (NEW) (*Effective July 1, 2008*) (a) A real estate broker or real  
636 estate salesperson licensed under chapter 392 of the general statutes  
637 shall not influence residential real estate appraisals. For the purposes  
638 of this section, "influence residential real estate appraisals" includes,  
639 but is not limited to, refusal or intentional failure to refer a homebuyer,  
640 or encouraging other real estate brokers or real estate agents not to  
641 refer a homebuyer, to a mortgage broker or lender based solely on the  
642 fact that the mortgage broker or lender uses an appraiser who has  
643 provided an appraisal reflecting a fair market value estimate that was  
644 less than the sale contract price.

645       (b) The Commissioner of Consumer Protection may, upon a verified  
646 complaint in writing of any person, if such complaint, or such  
647 complaint together with evidence, documentary or otherwise,  
648 presented in connection with such complaint, make out a prima facie  
649 case, of a violation of the provisions of subsection (a) of this section,  
650 investigate the actions of a real estate broker or real estate sales person.  
651 If a real estate broker or real estate sales person violates the provisions  
652 of subsection (a) of this section, the commissioner may temporarily  
653 suspend or permanently revoke a license issued under the provisions  
654 of chapter 392 of the general statutes after notice and hearing in  
655 accordance with chapters 392 and 54 of the general statutes. In  
656 addition to or in lieu of such suspension or revocation, the  
657 commissioner may impose a civil penalty of not more than one  
658 thousand dollars for each offense for any violation of the provisions of

659 subsection (a) of this section.

660 Sec. 16. (NEW) (*Effective July 1, 2008*) Not later than January 1, 2009,  
661 the Banking Commissioner shall adopt regulations, in accordance with  
662 the provisions of chapter 54 of the general statutes, establishing an on-  
663 line continuing education program for entities in the mortgage lending  
664 business that are required to be licensed under chapter 668 of the  
665 general statutes or the 2008 supplement to the general statutes. The  
666 Department of Banking shall be solely and exclusively responsible for  
667 the provision of such courses. The regulations shall set forth the subject  
668 matter and hours of the courses required of such licensees, provided  
669 the continuing education program shall not require any licensee to  
670 complete more than eight hours of course study over the course of one  
671 calendar year, or twelve hours of course study over the course of two  
672 calendar years. The licensees shall bear the costs associated with their  
673 completion of the on-line continuing education requirement imposed  
674 by this section and by the regulations adopted under this section.

675 Sec. 17. (NEW) (*Effective July 1, 2008*) Any holder of a mortgage of a  
676 residential property inhabited by tenants shall notify the tenants no  
677 later than sixty days after the commencement of any foreclosure action  
678 instituted against the mortgage holder. A tenant may terminate the  
679 tenant's lease without penalty after receipt of the notice required by  
680 this section and up to a period of thirty days after receipt of the notice.

681 Sec. 18. (*Effective July 1, 2008*) (a) The Banking Commissioner shall  
682 enforce the provisions of sections 9 to 14, inclusive, 16 and 17 of this  
683 act, and shall have the following powers and duties for such purposes:

684 (1) The commissioner may adopt regulations, in accordance with  
685 chapter 54 of the general statutes, necessary to carry out sections 9 to  
686 14, inclusive, 16 and 17 of this act, and prohibit acts, practices or terms  
687 in connection with: (A) Mortgages that the commissioner finds are  
688 unfair, deceptive or designed to evade the provisions of sections 9 to  
689 14, inclusive, of this act; and (B) mortgages that the commissioner finds  
690 are associated with abusive, unfair or deceptive lending practices or  
691 that are otherwise not in the interest of the borrowing public.

692 (2) The commissioner shall conduct examinations and investigations  
693 and issue subpoenas and orders to enforce the provisions of sections 9  
694 to 14, inclusive, 16 and 17 of this act with respect to lenders or brokers.

695 (3) The commissioner may examine any instrument, document,  
696 account, book, record, or file of a lender or mortgage broker under  
697 sections 9 to 14, inclusive, 16 and 17 of this act. The commissioner shall  
698 recover the cost of examinations from the person. A person making or  
699 brokering mortgage loans shall maintain its records in a manner that  
700 will facilitate the commissioner in determining whether the person is  
701 complying with sections 9 to 14, inclusive, 16 and 17 of this act and the  
702 regulations adopted under this section. The commissioner shall require  
703 the submission of reports by lenders or mortgage brokers that include  
704 such information as the commissioner requires in regulation.

705 (4) In the event that a person fails to comply with a subpoena for  
706 documents or testimony issued by the commissioner, the  
707 commissioner may request an order from a court of competent  
708 jurisdiction requiring the person to produce the requested information.

709 (5) If the commissioner determines that a person has violated a  
710 provision of sections 9 to 14, inclusive, or section 16 or 17 of this act,  
711 the commissioner may do any combination of the following that the  
712 commissioner deems appropriate: (A) Take action against such person  
713 in accordance with section 36a-50 of the general statutes. No action  
714 taken by the commissioner against a creditor in accordance with  
715 section 36a-50 of the general statutes shall otherwise relieve the  
716 creditor from civil liability; (B) suspend, revoke or refuse to renew any  
717 license issued by the department in accordance with section 36a-51 of  
718 the 2008 supplement to the general statutes; (C) prohibit or  
719 permanently remove an individual responsible for a violation of  
720 sections 9 to 14, inclusive, or section 16 or 17 of this act from working  
721 in his present capacity or in any other capacity related to activities  
722 regulated by the department; (D) order a person to cease and desist  
723 any violation of sections 9 to 14, inclusive, or section 16 or 17 of this act  
724 in accordance with section 36a-52 of the 2008 supplement to the

725 general statutes and to make restitution and other appropriate relief,  
726 including loan modification or forgiveness, to borrowers; or (E) impose  
727 such other conditions as the commissioner deems appropriate.

728 (b) Nothing contained in this section shall be construed as a  
729 limitation upon the power or authority of the state, the Attorney  
730 General or the commissioner to seek administrative, legal or equitable  
731 relief pursuant to any provision of the general statutes or at common  
732 law.

733 (c) The remedies provided in this section are cumulative and do not  
734 restrict any other right or remedy otherwise available to the borrower.

735 Sec. 19. (NEW) (*Effective July 1, 2008*) The workforce development  
736 boards shall establish a Mortgage Crisis Job Training Team in  
737 conjunction with CTWorks One Stop Career Centers to provide rapid,  
738 customized employment services, job retraining and placement  
739 assistance for those unemployed, underemployed or in need of a  
740 second job. The Mortgage Crisis Job Training Team shall also provide  
741 financial literacy and credit repair training.

742 Sec. 20. Subsection (a) of section 36a-492 of the 2008 supplement to  
743 the general statutes, as amended by section 10 of public act 07-156, is  
744 repealed and the following is substituted in lieu thereof (*Effective*  
745 *September 30, 2008*):

746 (a) No mortgage lender or first mortgage broker license, and no  
747 renewal thereof, shall be granted unless the applicant has filed a bond  
748 with the commissioner written by a surety authorized to write such  
749 bonds in this state, in the sum of forty thousand dollars, the form of  
750 which shall be approved by the Attorney General, provided effective  
751 January 1, 2009, the bond shall be in the amount of sixty thousand  
752 dollars. Such bond shall be conditioned upon such licensee faithfully  
753 performing any and all written agreements or commitments with or  
754 for the benefit of borrowers and prospective borrowers, truly and  
755 faithfully accounting for all funds received from a borrower or  
756 prospective borrower by the licensee in the licensee's capacity as a



757 mortgage lender or a first mortgage broker, and conducting such  
758 mortgage business consistent with the provisions of sections 36a-485 to  
759 36a-498a, inclusive. Any borrower or prospective borrower who may  
760 be damaged by failure to perform any written agreements or  
761 commitments, or by the wrongful conversion of funds paid by a  
762 borrower or prospective borrower to a licensee, may proceed on such  
763 bond against the principal or surety thereon, or both, to recover  
764 damages. The commissioner may proceed on such bond against the  
765 principal or surety thereon, or both, to collect any civil penalty  
766 imposed upon the licensee pursuant to subsection (a) of section 36a-50.  
767 The proceeds of the bond, even if commingled with other assets of the  
768 licensee, shall be deemed by operation of law to be held in trust for the  
769 benefit of such claimants against the licensee in the event of  
770 bankruptcy of the licensee and shall be immune from attachment by  
771 creditors and judgment creditors. The bond shall run concurrently  
772 with the period of the license granted to the applicant, and the  
773 aggregate liability under the bond shall not exceed the penal sum of  
774 the bond.

775       Sec. 21. Section 36a-3 of the 2008 supplement to the general statutes  
776 is repealed and the following is substituted in lieu thereof (*Effective July*  
777 *1, 2008*):

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

- T1       "Account". Sections 36a-155 and 36a-365.  
T2       "Additional proceeds". Section 36a-746e.  
T3       "Administrative expense". Section 36a-237.  
T4       "Advance fee". Sections 36a-485 of the 2008 supplement to  
T5       the general statutes, 36a-510 of the 2008 supplement to  
T6       the general statutes and 36a-615.  
T7       "Advertise" or "advertisement". Sections 36a-485 of the  
T8       2008 supplement to the general statutes and 36a-510 of

- T9 the 2008 supplement to the general statutes.
- T10 "Agency bank". Section 36a-285.
- T11 "Alternative mortgage loan". Section 36a-265.
- T12 "Amount financed". Section 36a-690.
- T13 "Annual percentage rate". Section 36a-690.
- T14 "Annual percentage yield". Section 36a-316.
- T15 "Annuities". Section 36a-455a.
- T16 "Applicant". Section 36a-736.
- T17 "APR". Section 36a-746a.
- T18 "Assessment area". Section 36a-37.
- T19 "Assets". Section 36a-70.
- T20 "Associate". Section 36a-184.
- T21 "Associated member". Section 36a-458a.
- T22 "Authority". Section 1 of this act.
- T23 "Bank". Section 36a-30.
- T24 "Bankers' bank". Section 36a-70.
- T25 "Banking business". Section 36a-425.
- T26 "Basic services". Section 36a-437a.
- T27 "Billing cycle". Section 36a-565.
- T28 "Bona fide nonprofit organization". Section 36a-655.
- T29 "Branch". Sections 36a-145 of the 2008 supplement to the
- T30 general statutes, 36a-410 of the 2008 supplement to the
- T31 general statutes and 36a-435b.
- T32 "Branch or agency net payment entitlement". Section 36a-428n.
- T33 "Branch or agency net payment obligation". Section 36a-428n.
- T34 "Broker". Section 36a-746a.
- T35 "Business and industrial development corporation". Section 36a-626.
- T36 "Business and property in this state". Section 36a-428n.
- T37 "Capital". Section 36a-435b.
- T38 "Cash advance". Section 36a-564.
- T39 "Cash price". Section 36a-770.
- T40 "Certificate of incorporation". Section 36a-435b.
- T41 "Closely related activities". Sections 36a-250 and 36a-455a.
- T42 "Collective managing agency account". Section 36a-365.
- T43 "Commercial vehicle". Section 36a-770.

- T44 "Community bank". Section 36a-70.
- T45 "Community credit union". Section 36a-37.
- T46 "Community development bank". Section 36a-70.
- T47 "Community reinvestment performance". Section 36a-37.
- T48 "Connecticut holding company". Sections 36a-53 of the
- T49 2008 supplement to the general statutes and 36a-410 of
- T50 the 2008 supplement to the general statutes.
- T51 "Consolidate". Section 36a-145 of the 2008 supplement to
- T52 the general statutes.
- T53 "Construction loan". Section 36a-458a.
- T54 "Consumer". Sections 36a-155, 36a-676 and 36a-695.
- T55 "Consumer Credit Protection Act". Section 36a-676.
- T56 "Consumer debtor" and "debtor". Sections 36a-645 and
- T57 36a-800 of the 2008 supplement to the general statutes.
- T58 "Consumer collection agency". Section 36a-800 of the 2008
- T59 supplement to the general statutes.
- T60 "Consummation". Section 36a-746a.
- T61 "Controlling interest". Section 36a-276.
- T62 "Corporate". Section 36a-435b.
- T63 "Credit". Sections 36a-645 and 36a-676.
- T64 "Credit manager". Section 36a-435b.
- T65 "Creditor". Sections 36a-676, 36a-695 and 36a-800 of the
- T66 2008 supplement to the general statutes.
- T67 "Credit card", "cardholder" and "card issuer". Section 36a-676.
- T68 "Credit clinic". Section 36a-700.
- T69 "Credit rating agency". Section 36a-695.
- T70 "Credit report". Section 36a-695.
- T71 "Credit sale". Section 36a-676.
- T72 "Credit union service organization". Section 36a-435b.
- T73 "Credit union service organization services". Section 36a-435b.
- T74 "De novo branch". Section 36a-410 of the 2008 supplement
- T75 to the general statutes.
- T76 "Debt". Section 36a-645.
- T77 "Debt adjustment". Section 36a-655.
- T78 "Debt mutual fund". Sections 36a-275 and 36a-459a.

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| T79  | "Debt securities". Sections 36a-275 and 36a-459a.                      |
| T80  | "Debtor". Section 36a-655.   |
| T81  | "Deliver". Section 36a-316.  |
| T82  | "Deposit". Section 36a-316.  |
| T83  | "Deposit account". Section 36a-316.                                    |
| T84  | "Deposit account charge". Section 36a-316.                             |
| T85  | "Deposit account disclosures". Section 36a-316.                        |
| T86  | "Deposit contract". Section 36a-316.                                   |
| T87  | "Deposit services". Section 36a-425.                                   |
| T88  | "Depositor". Section 36a-316.  |
| T89  | "Director". Section 36a-435b.  |
| T90  | "Earning period". Section 36a-316.                                     |
| T91  | "Electronic payment instrument". Section 36a-596 <u>of the</u>         |
| T92  | <u>2008 supplement to the general statutes.</u>                        |
| T93  | "Eligible collateral". Section 36a-330.                                |
| T94  | <u>"EMAP" or "Emergency Mortgage Assistance Program". Section 1 of</u> |
| T95  | <u>this act.</u>   |
| T96  | "Equity mutual fund". Sections 36a-276 and 36a-459a.                   |
| T97  | "Equity security". Sections 36a-276 and 36a-459a.                      |
| T98  | "Executive officer". Sections 36a-263 and 36a-469c.                    |
| T99  | "Federal Credit Union Act". Section 36a-435b.                          |
| T100 | "Federal Home Mortgage Disclosure Act". Section 36a-736.               |
| T101 | "Fiduciary". Section 36a-365.  |
| T102 | "Filing fee". Section 36a-770.   |
| T103 | "Finance charge". Sections 36a-690 and 36a-770.                        |
| T104 | "Financial institution". Sections 36a-41, 36a-44a, 36a-155, 36a-316,   |
| T105 | 36a-330, 36a-435b and 36a-736.   |
| T106 | "Financial records". Section 36a-41.                                   |
| T107 | "First mortgage broker". Section 36a-485 <u>of the 2008</u>            |
| T108 | <u>supplement to the general statutes.</u>                             |
| T109 | "First mortgage correspondent lender". Section 36a-485 <u>of</u>       |
| T110 | <u>the 2008 supplement to the general statutes.</u>                    |
| T111 | "First mortgage lender". Section 36a-485 <u>of the 2008</u>            |
| T112 | <u>supplement to the general statutes.</u>                             |
| T113 | "First mortgage loan". Sections 36a-485 <u>of the 2008</u>             |

- T114 supplement to the general statutes, 36a-705, [and] 36a-715, and  
T115 section 9 of this act.
- T116 "Foreign banking corporation". Section 36a-425.
- T117 "General facility". Section 36a-580.
- T118 "Global net payment entitlement". Section 36a-428n.
- T119 "Global net payment obligation". Section 36a-428n.
- T120 "Goods". Sections 36a-535 and 36a-770.
- T121 "Graduated payment mortgage loan". Section 36a-265.
- T122 "Guardian". Section 36a-365.
- T123 "HERO program" or "Homeowner's Equity Recovery Opportunity  
T124 Loan program". Section 1 of this act.
- T125 "High cost home loan". Section 36a-746a.
- T126 "Holder". Section 36a-596 of the 2008 supplement to the  
T127 general statutes.
- T128 "Home banking services". Section 36a-170.
- T129 "Home banking terminal". Section 36a-170.
- T130 "Home improvement loan". Section 36a-736.
- T131 "Home purchase loan". Section 36a-736.
- T132 "Home state". Section 36a-410 of the 2008 supplement to  
T133 the general statutes.
- T134 "Immediate family member". Section 36a-435b.
- T135 "Insider". Section 36a-454b.
- T136 "Installment loan contract". Sections 36a-535 and 36a-770.
- T137 "Insurance". Section 36a-455a.
- T138 "Insurance bank". Section 36a-285.
- T139 "Insurance department". Section 36a-285.
- T140 "Interest". Section 36a-316.
- T141 "Interest rate". Section 36a-316.
- T142 "Lender". Sections 36a-746a and 36a-770, and sections 9 and 10 of  
T143 this act.
- T144 "Lessor". Section 36a-676.
- T145 "License". Section 36a-626.
- T146 "Licensee". Sections 36a-510 of the 2008 supplement to the  
T147 general statutes, 36a-596 of the 2008 supplement to the  
T148 general statutes and 36a-626.

- T149 "Limited branch". Section 36a-145 of the 2008 supplement  
T150 to the general statutes.
- T151 "Limited facility". Section 36a-580.
- T152 "Loan broker". Section 36a-615.
- T153 "Loss". Section 36a-330.
- T154 "Made in this state". Section 36a-770.
- T155 "Managing agent". Section 36a-365.
- T156 "Manufactured home". Section 36a-457b.
- T157 "Material litigation". Section 36a-596 of the 2008  
T158 supplement to the general statutes.
- T159 "Member". Section 36a-435b.
- T160 "Member business loan". Section 36a-458a.
- T161 "Member in good standing". Section 36a-435b.
- T162 "Membership share". Section 36a-435b.
- T163 "Mobile branch". Section 36a-435b.
- T164 "Money order". Section 36a-596 of the 2008 supplement to  
T165 the general statutes.
- T166 "Money transmission". Section 36a-365.
- T167 "Mortgage broker". Sections 9 and 10 of this act.
- T168 "Mortgage insurance". Section 36a-725.
- T169 "Mortgage lender". Sections 36a-485 of the 2008  
T170 supplement to the general statutes, 36a-510 of the 2008  
T171 supplement to the general statutes and 36a-705.
- T172 "Mortgage". Sections 1 and 10 of this act.
- T173 "Mortgagee". Section 1 of this act.
- T174 "Mortgage loan". Sections 36a-261, 36a-265 and 36a-457b.
- T175 "Mortgage assistance program committee". Section 1 of this act.
- T176 "Mortgage rate lock-in". Section 36a-705.
- T177 "Mortgage servicing company". Section 36a-715.
- T178 "Mortgagor". Section 36a-715 and section 1 of this act.
- T179 "Motor vehicle". Section 36a-770.
- T180 "Multiple common bond membership". Section 36a-435b.
- T181 "Municipality". Section 36a-800 of the 2008 supplement to  
T182 the general statutes.
- T183 "Net outstanding member business loan balance". Section 36a-458a.

- T184 "Net worth". Sections 36a-441a, 36a-458a and 36a-596 of  
T185 the 2008 supplement to the general statutes.
- T186 "Network". Section 36a-155.
- T187 "Nonprime home loan". Section 9 of this act.
- T188 "Nonrefundable". Sections 36a-498 of the 2008  
T189 supplement to the general statutes and 36a-521 of  
T190 the 2008 supplement to the general statutes.
- T191 "Note account". Sections 36a-301 and 36a-456b.
- T192 "Office". Section 36a-316.
- T193 "Officer". Section 36a-435b.
- T194 "Open-end credit plan". Section 36a-676.
- T195 "Open-end loan". Section 36a-565.
- T196 "Organization". Section 36a-800 of the 2008 supplement to  
T197 the general statutes.
- T198 "Originator". Sections 36a-485 of the 2008 supplement to  
T199 the general statutes and 36a-510 of the 2008 supplement  
T200 to the general statutes.
- T201 "Out-of-state holding company". Section 36a-410 of the  
T202 2008 supplement to the general statutes.
- T203 "Outstanding". Section 36a-596 of the 2008 supplement to  
T204 the general statutes.
- T205 "Passbook savings account". Section 36a-316.
- T206 "Payment instrument". Section 36a-596 of the 2008  
T207 supplement to the general statutes.
- T208 "Periodic statement". Section 36a-316.
- T209 "Permissible investment". Section 36a-596 of the 2008  
T210 supplement to the general statutes.
- T211 "Person". Section 36a-184.
- T212 "Post". Section 36a-316.
- T213 "Prepaid finance charge". Section 36a-746a.
- T214 "Prepayment penalty". Section 36a-746a.
- T215 "Prime quality". Section 36a-596 of the 2008 supplement  
T216 to the general statutes.
- T217 "Principal amount of the loan". Section 36a-510 of the  
T218 2008 supplement to the general statutes.

- T219 "Processor". Section 36a-155.
- T220 "Public deposit". Section 36a-330.
- T221 "Purchaser". Section 36a-596 of the 2008 supplement to
- T222 the general statutes.
- T223 "Qualified financial contract". Section 36a-428n.
- T224 "Qualified public depository" and "depository". Section 36a-330.
- T225 "Real estate". Section 36a-457b.
- T226 "REAL program" or "REfinance to an Affordable Loan program".
- T227 Section 1 of this act.
- T228 "Records". Section 36a-17.
- T229 "Related person". Section 36a-53 of the 2008 supplement
- T230 to the general statutes.
- T231 "Relocate". Sections 36a-145 of the 2008 supplement to the
- T232 general statutes and 36a-462a.
- T233 "Residential property". Section 36a-485 of the 2008
- T234 supplement to the general statutes and section 9 of this act.
- T235 "Retail buyer". Sections 36a-535 and 36a-770.
- T236 "Retail credit transaction". Section 42-100b.
- T237 "Retail installment contract". Sections 36a-535 and 36a-770.
- T238 "Retail installment sale". Sections 36a-535 and 36a-770.
- T239 "Retail seller". Sections 36a-535 and 36a-770.
- T240 "Reverse annuity mortgage loan". Section 36a-265.
- T241 "Sales finance company". Sections 36a-535 and 36a-770.
- T242 "Savings department". Section 36a-285.
- T243 "Savings deposit". Section 36a-316.
- T244 "Secondary mortgage broker". Section 36a-510 of the 2008
- T245 supplement to the general statutes.
- T246 "Secondary mortgage correspondent lender". Section 36a-
- T247 510 of the 2008 supplement to the general statutes.
- T248 "Secondary mortgage lender". Section 36a-510 of the 2008
- T249 supplement to the general statutes.
- T250 "Secondary mortgage loan". Section 36a-510 of the 2008
- T251 supplement to the general statutes and section 9 of this act.
- T252 "Security convertible into a voting security". Section 36a-184.
- T253 "Senior management". Section 36a-435b.



- T254 "Share". Section 36a-435b.
- T255 "Simulated check". Sections 36a-485 of the 2008
- T256 supplement to the general statutes and 36a-510 of the
- T257 2008 supplement to the general statutes.
- T258 "Single common bond membership". Section 36a-435b.
- T259 "Social purpose investment". Section 36a-277.
- T260 "Standard mortgage loan". Section 36a-265.
- T261 "Table funding agreement". Section 36a-485 of the 2008
- T262 supplement to the general statutes.
- T263 "Tangible benefit to the borrower". Section 11 of this act.
- T264 "Tax and loan account". Sections 36a-301 and 36a-456b.
- T265 "The Savings Bank Life Insurance Company". Section 36a-285.
- T266 "Time account". Section 36a-316.
- T267 "Travelers check". Section 36a-596 of the 2008 supplement
- T268 to the general statutes.
- T269 "Troubled Connecticut credit union". Section 36a-448a.
- T270 "Unsecured loan". Section 36a-615.
- T271 "Warehouse agreement". Section 36a-485 of the 2008
- T272 supplement to the general statutes.
- T273 "Yield spread premium". Section 13 of this act.

|   |                     |             |
|---|---------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                     |             |
| Section 1   | <i>July 1, 2008</i> | New section |
| Sec. 2  | <i>July 1, 2008</i> | New section |
| Sec. 3  | <i>July 1, 2008</i> | New section |
| Sec. 4  | <i>July 1, 2008</i> | New section |
| Sec. 5  | <i>July 1, 2008</i> | New section |
| Sec. 6  | <i>July 1, 2008</i> | New section |
| Sec. 7  | <i>July 1, 2008</i> | New section |
| Sec. 8  | <i>July 1, 2008</i> | New section |
| Sec. 9  | <i>July 1, 2008</i> | New section |
| Sec. 10   | <i>July 1, 2008</i> | New section |
| Sec. 11   | <i>July 1, 2008</i> | New section |
| Sec. 12   | <i>July 1, 2008</i> | New section |
| Sec. 13   | <i>July 1, 2008</i> | New section |

|         |                           |             |
|---------|---------------------------|-------------|
| Sec. 14 | <i>July 1, 2008</i>       | New section |
| Sec. 15 | <i>July 1, 2008</i>       | New section |
| Sec. 16 | <i>July 1, 2008</i>       | New section |
| Sec. 17 | <i>July 1, 2008</i>       | New section |
| Sec. 18 | <i>July 1, 2008</i>       | New section |
| Sec. 19 | <i>July 1, 2008</i>       | New section |
| Sec. 20 | <i>September 30, 2008</i> | 36a-492(a)  |
| Sec. 21 | <i>July 1, 2008</i>       | 36a-3       |

**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 chamber thereof for any purpose:

## OFA Fiscal Note

### State Impact:

| Agency Affected   | Fund-Effect | FY 09 \$              | FY 10 \$              |
|---|-------------|-----------------------|-----------------------|
| Banking Dept.   | BF - Cost   | 4,700,000             | 900,000               |
| Department of Economic & Community Development              | GF - Cost   | Potential Significant | Potential Significant |
| Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>   | GF - Cost   | Potential Significant | Potential Significant |
| Connecticut Housing Finance Authority – quasi public agency | See Below   | See Below             | See Below             |

Note: BF=Banking Fund; GF=General Fund

### Municipal Impact: None

### Explanation

The bill requires the Department of Economic and Community Development to aid in administering the Homeowner's Equity Recovery Opportunity Loan (HERO) program and the emergency mortgage assistance program (EMAP) developed by the mortgage assistance program committee. It is unclear which committee-approved agency would provide and pay for the required financial counseling under the REfinance to an Affordable Loan (REAL) program.

DECD could require up to 18 additional personnel totaling approximately \$1.0 million to administer the assistance programs. DECD responsibilities under the bill include accepting applications, servicing loans, and performing procedures and abiding by standards

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

to be established by the mortgage assistance committee. The positions associated with this include: a community development director and specialist, three agents and three assistant agents, a fiscal administrative officer, two attorneys, two paralegals, and a full-time accounts examiner. Positions also include an administrative assistant and two secretaries. Assuming DECD will service the mortgage assistance hot line established in the bill, an additional secretary would be needed. The fringe benefits for all employees would total \$264,000 in FY 09 and \$610,000 in FY 10.

The bill transfers \$40 million from the Connecticut Housing Finance Authority (CHFA) to the Department of Economic and Community Development to administer the mortgage assistance programs. To the extent that this violates CHFA's covenant with holders of its bonds, the bill could result in legal costs to the state.

To the degree that the bill has an adverse effect on the financial markets' perception of the creditworthiness of Connecticut or CHFA, the bill could lower the state's or CHFA's credit ratings, which would increase the cost of future bonded indebtedness.

The bill requires the workforce development boards to establish a Mortgage Crisis Job Training Team in conjunction with CTWorks One Stop Career Centers. There could be a minimal cost to the Department of Labor to the extent services beyond those currently offered One Stop Centers are required.

The bill results in a cost of approximately \$4,700,000 in FY 09 to the Department of Banking (DOB) including funds for seven new positions and associated fringe benefits and other expenses along with funds needed to create a data system to meet requirements set forth in the bill. Staffing needs include two attorneys necessitated by the number and timeframes set forth for new regulations in the bill. Additionally the DOB would need to establish a real estate division which initially would require five staff but could eventually grow larger. Finally the bill would require the DOB to create a data base system for mortgage lending businesses that are required to be

licensed under the banking statutes.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 5577*****AN ACT CONCERNING RESPONSIBLE LENDING AND ECONOMIC SECURITY.*****SUMMARY:**

The bill creates three mortgage assistance programs and establishes a 10-member mortgage assistance program committee to develop standards for and procedures to implement them within the Department of Economic and Community Development (DECD). The programs must be funded by state bonding and loan repayments under the programs. The governor, House speaker, Senate president pro tempore, House and Senate majority and minority leaders, the banking commissioner and the Banks Committee chairpersons must each appoint one member to the mortgage assistance program committee. The committee must elect a chair from among its members.

The committee must develop written standards that, at a minimum, establish (1) the standards for qualifying mortgages and mortgagors for the emergency mortgage assistance programs; (2) the scope and nature of the emergency assistance available; and (3) the terms and conditions under which DECD will provide, and be repaid for the assistance provided under the programs. The committee must also develop an application for relief and procedures for the committee's determination of eligibility. The standards and procedures the committee will develop must be adopted in regulations by DECD by October 1, 2008.

For all loans, the bill establishes a fiduciary duty from all lenders and mortgage brokers to borrowers. The bill prohibits the financing of insurance and refinancing that do not benefit the borrower. It requires mortgage professionals to use reasonable care, requires disclosures

with regard to yield spread premiums, and prohibits the influencing of real estate appraisals. It also prescribes on-line continuing education for mortgage lending professionals and increases mortgage broker surety bonds. The bill also allows the banking commissioner to impose a case-by-case foreclosure moratorium of up to six months.

The bill defines “nonprime loans.” For nonprime loans, it establishes a specific fiduciary duty. It prohibits certain provisions in a nonprime loan, such as prepayment penalties and interest rate increases after default. It also prohibits the making of these loans unless the borrower is properly qualified and takes a course, funds are escrowed, and a specific notice is provided.

For all of these lending provisions, the bill defines a “mortgage broker” as a Department of Banking (DOB)-licensed person who, for a fee, commission, or other valuable consideration, negotiates, solicits, arranges, places, or finds a mortgage, or his successors or assigns. It defines a “lender” as any DOB-licensed person or entity originating a mortgage, or its successors or assigns.

EFFECTIVE DATE: July 1, 2008, except for the provision increasing the bond, which is effective on September 30, 2008.

## **§§ 1-4 - MORTGAGE ASSISTANCE PROGRAMS**

### ***Refinance to an Affordable Loan Program (REAL)***

The REAL program must combine 100% financing with flexible underwriting to refinance loans. It must offer 30-year fixed rates at .25% higher than the Connecticut Housing Finance Authority’s (CHFA) regular rate. Borrowers are eligible for this program if:

1. their combined gross annual income is no more than \$120,000, unless they fall under a committee-specified exceptions;
2. they are less than 60 days past due on their existing mortgage; and
3. they have a credit score of at least 620 or meet all of the

following conditions: (a) their mortgage payment has been adjusted in the past 12 months to a higher interest rate or a fully amortized payment and they have made no more than two, 30-days-late payments since the adjustment, and their mortgage payment history for 12 months before the adjustment shows no history of late payments; and (b) the borrower's credit history of debt other than the mortgage shows no more than three, 30-days-late payments in the 12 months prior to the mortgage adjustment.

The bill allows a borrower who meets the credit score requirements to borrow up to 100% of his or her home's value based upon a current appraisal, while a borrower with a lower credit score can borrow up to 95%. The bill allows the loan to be used to finance subordinate mortgages, closing costs, prepayment penalties, delinquent property taxes, and arrearages that have occurred within the 12 months after the loan reset. The bill limits borrowers total debt costs, including credit cards, motor vehicle loans, installment loans, REAL program mortgage payments, and student loans. If the borrower has at least a 620 credit score, his or her total debt costs cannot be more than 50% of his or her total gross monthly income. For borrowers with a lower credit score, total debt cost cannot be more than 45% of his or her total gross monthly income.

### ***Home Equity Recovery Option (HERO)***

The HERO program is available for those who are ineligible for the REAL program or other mortgage refinance products available in the general market due to credit issues or because they owe more than their home's current appraised value. This program requires DECD to purchase loans directly from lenders and then place borrowers on an affordable repayment plan. It must offer mortgages for up to a 30-year term, in an amount up to 100% of the home's value, and at a fixed rate of .25% higher than CHFA's regular rate.

The loan must be serviced by DECD and must include property taxes and insurance, including mortgage insurance, homeowner's



insurance and, if applicable, flood insurance, in the borrower's monthly payment amount. It can be used to pay off the current mortgage debt, closing costs, prepayment penalties, and delinquent property taxes.

Borrowers are eligible for this program if:

1. their combined gross annual income is no more than \$120,000, unless they fall under a committee-specified exceptions;
2. they have made an effort to meet their financial obligations to the best of their ability;
3. they have sufficient and stable income to support timely repayment of the HERO loan in regular, monthly installments and agree to make monthly mortgage payments by automatic payment directly from their bank account;
4. they have legal title to the mortgaged property and reside in it as their permanent residence;
5. they are able to account for their cash flow by showing how they escrowed, saved or redirected funds if they have stopped making monthly payments; and
6. the HERO loan is in first lien position.

***Emergency Mortgage Assistance Program (EMAP)***

EMAP is available for borrowers who do not qualify for the first two programs. EMAP must offer at least two types of mortgage assistance loans. First, it must offer noncontinuing mortgage assistance loans, where a mortgage is brought current to a specific date and the borrower is responsible for making all subsequent payments to the lender along with any repayment to EMAP. Second, it must offer continuing mortgage assistance loans, where the borrower pays its designated monthly payment to EMAP, and DECD combines the amount sent by the borrower with EMAP funds and forwards the full monthly mortgage payment directly to the lender for the borrower.

The bill also requires EMAP to include giving no-interest and prepayment penalty loans. A prepayment penalty loan allows DECD to pay any prepayment penalties that a borrower may incur in order to terminate his or her mortgage in connection with securing a better loan. DECD secures a secondary lien on the property securing the mortgagor's new loan.

The law already includes a CHFA-administered emergency mortgage assistance program. It is unfunded.

### ***Information About the Programs***

The bill requires the committee to, by October 1, 2008, establish hotlines or other programs or procedures to provide information about the mortgage assistance programs and assist eligible borrowers to renegotiate mortgages, engage foreclosure consultants, or provide for any other assistance it deems appropriate.

### ***Application Procedures (§§ 3, 4)***

The committee must evaluate, using the standards and procedures it develops, applicants' eligibility first for the Refinance to an Affordable Loan program (REAL), next for the Homeowners' Equity Recovery Opportunity Loan program (HERO), and finally for the emergency mortgage assistance program (EMAP). All borrowers approved for these programs must attend in-person financial counseling at a committee-approved agency. The bill does not specify who will pay for this service.

The committee must start receiving applications for, and making determinations of eligibility for, the REAL program, HERO program and EMAP, by October 1, 2008. The committee must make its eligibility determinations within 30 calendar-days of receiving an application. Approved loans must move to closing within 45 days of the committee's determination of loan eligibility. It is not clear what is meant by the term "move to closing."

Funds cannot be provided unless the committee determines that its eligibility standards are met. Borrowers must apply for the program on

the committee-prescribed form. If the committee determines that a borrower is eligible for the REAL program, HERO program, or EMAP, it must authorize DECD to make payments to the borrower in accordance with the applicable program.

Borrowers must complete and sign the application subject to the penalty for false statement, a Class A misdemeanor punishable by up to one year imprisonment, a fine of up to \$2,000, or both. The borrower must provide the committee with full disclosure of all assets and liabilities, whether singly or jointly held, and all household income regardless of source. Any borrower who misrepresents any financial or other material information in conjunction with filing an application for REAL program, HERO program, or EMAP, or any modification of such assistance, can be denied assistance and required to immediately repay any amount of assistance already provided. Additionally, DECD can take any remedial action permitted under law or equity that it deems appropriate to recover mortgage assistance provided under the programs when the borrower fails to repay in accordance with the committee's terms and conditions.

***Affordable Supportive Housing (§ 6)***

The bill requires the DOB to develop a program to purchase foreclosed residential real property located in this state for resale for the purposes of providing affordable and supportive housing. However, DOB can only purchase the property if (1) the property is sold at a discount, and (2) the transfer of funds, the purchase of the property, and the resale of the property, are approved in advance by the mortgage assistance committee.

***Program Funding (§§2, 7-8)***

The bill requires the mortgage programs to be funded by state bonding and repayment of loans provided by the programs. All funds received by DECD under the mortgage assistance programs and the supportive housing program must be deposited in the funds or accounts established by DECD and can only be used for these programs.

The bill requires CHFA to transfer to DECD \$40 million of CHFA's pre-1986 bond sale proceeds. DECD must use this money for the REAL and HERO programs. It is unclear whether this action may violate CHFA's bond covenants to use those funds for a specific purpose (see BACKGROUND).

For EMAP and the affordable supportive housing program, the bill authorizes up to an aggregate of \$100 million in state bonding, with (1) \$35 million effective July 1, 2008, (2) \$35 million effective July 1, 2009, (3) \$15 million effective July 1, 2010, and (4) \$15 million effective July 1, 2012.

### ***Definitions (§ 1)***

For all of its mortgage assistance provisions, the bill defines the term "mortgage" as a mortgage deed or other instrument that constitutes a first or secondary consensual lien on any interest in one-to-four family residential real property located in this state, which is, or when the loan is made, intended to be occupied by the borrower as a principal residence. It includes nonprime home loans.

### ***§§ 5, 17 - FORECLOSURES***

#### ***Notice (§ 5)***

Starting on October 1, 2008, the bill requires a lender who wants to foreclose on a mortgage to provide notice to the borrower by registered or certified mail, postage prepaid, at the address of the property that is secured by the mortgage. It is not clear how this requirement works with existing foreclosure notice requirements. The lender has to wait 30 days after mailing the notice before it commences foreclosure. The notice must, at least, tell the borrower about his or her delinquency or other default and his or her right to try to get assistance from DECD under the mortgage assistance programs the bill establishes. The committee must determine the notice's specific contents. Borrowers who want to apply for the programs have 30 days from the receipt of the notice, or 30 days from the day they refused delivery of the notice, whichever is earlier, to begin the application process by meeting with a designated counseling agency. The

counseling agency must prepare the application and submit the initial paperwork to DECD. Foreclosure actions must cease as long as the mortgagor files a timely application with the DECD.

### ***Moratorium (§ 5)***

The bill requires the banking commissioner, by October 1, 2008, to adopt regulations to establish criteria for the granting of foreclosure action moratoriums of up to six months. The moratoriums must be granted on a case-by-case basis. The bill gives a borrower who is denied relief under the program the right to seek a continuing moratorium of the foreclosure action. It is unclear how or if this moratorium is affected by the constitutional provision prohibiting the impairment of contracts (See BACKGROUND). The borrower must exercise this right by submitting an application to the banking commissioner within 30 days of the denial notice's postmark date.

If the commissioner grants moratorium request, the commissioner must notify both parties in writing, setting forth the basis for the commissioner's determination and the term of the moratorium. The lender cannot commence an action until this term has expired. The bill also requires the parties to meet within 90 days of receipt of the commissioner's notice to attempt to renegotiate the loan terms. If they are unable to renegotiate the terms, the lender can take any legal action to enforce the mortgage when the moratorium period is over, without further restrictions or requirements. Additionally, the bill specifically provides that if the commissioner denies the request for a moratorium, the lender may take any legal action to enforce the mortgage without further restrictions or requirements.

### ***Notifying Tenants of Foreclosure (§ 17)***

The bill requires a residential mortgage holder to notify any tenants inhabiting the property of the commencement of a foreclosure action instituted against the mortgage holder within 60 days of such action. The bill allows the tenant to terminate his or her lease without penalty for up to 30 days after receiving the notice. It appears as if the bill is referring to the borrower when the term "mortgage holder" is used.

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**LENDING REQUIREMENTS APPLICABLE TO ALL LOANS*****Duties of Mortgage Broker (§§ 9, 12)***

The bill requires a mortgage broker (1) to use reasonable care, skill, and diligence in performing the broker's duties; (2) make reasonable efforts to secure a loan that is in the best interests of the borrower considering all the circumstances, including the rates, points, fees, charges, costs, and product type; and (3) ensure that the cost of credit is appropriate considering the borrower's level of creditworthiness. The bill also establishes a fiduciary duty from lenders to borrowers.

***Tangible Benefit from Refinancing Section (§ 11)***

The bill prohibits lenders from offering a refinanced mortgage unless it will provide a tangible benefit to the borrower. The bill defines a "tangible benefit" as cash back at closing in the amount of at least 5% of the appraised value of the home securing the mortgage or at least a 5% reduction in the borrower's monthly mortgage payment without a significant extension of the term of the loan. It is not clear if the monthly mortgage payment is limited to just principal and interest. The bill prohibits lenders from taking any action that recommends or encourages a default on an existing mortgage or other debt prior to and in connection with the closing or planned closing of a new mortgage that refinances all or any portion of the existing loan or debt.

***Prohibition on Financing Insurance and Certain Payments (§ 11)***

The bill prohibits lenders from financing, in connection with a mortgage, any credit life, credit disability, credit unemployment, or credit property insurance or any other life or health insurance or any payments directly or indirectly for any debt cancellation or suspension agreement or contract. But, the bill provides that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis or through regularly scheduled periodic payments are not considered to be financed by the lender.

***Terminating Foreclosure Proceedings (§ 11)***

The bill requires lenders to take the necessary steps to terminate a foreclosure proceeding or other action if all defaults in connection with

a residential mortgage are cured within 90-days of the foreclosure action's initiation. The bill allows lenders to require the borrower to pay any reasonable costs actually incurred by the lender before the default was cured. The curing of the default reinstates the borrower to the same position as if the default had not occurred and nullifies, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default. The bill specifies that term "cure" means payment of arrearages.

### ***Yield Spread Premiums (§ 13)***

The bill requires mortgage brokers to clearly and conspicuously disclose to the borrower any "yield spread premium," which the bill defines as any amount to be paid by the lender to the broker in connection with a mortgage. The disclosure must be made before the mortgage is signed. It must be a separate document written in plain language that states the existence and amount of the yield spread premium and the amount of money that it costs the borrower. The bill appears to require the broker to provide the borrower with any written broker agreement.

### ***Influence of Real Estate Appraisals (§§ 14, 15)***

The bill prohibits mortgage brokers from influencing residential real estate appraisals. In this context, the bill defines this as including the refusal or intentional failure to (1) pay an appraiser for an appraisal that reflects a fair market value estimate that is less than the sale contract price; or (2) utilize, or encourage other mortgage brokers not to utilize, an appraiser based solely on the fact that the appraiser provided an appraisal reflecting a fair market value estimate that was less than the sale contract price.

The bill allows the banking commissioner to, upon a verified written complaint in writing of any person, investigate the actions of a mortgage broker if the complaint, or evidence presented with the complaint, makes out a prima facie case of a violation. If a mortgage broker violates these requirements, the bill allows the commissioner to temporarily suspend or permanently revoke the broker's license after

the appropriate notice and hearing. In addition to or instead of the suspension or revocation, the bill allows the commissioner to impose a civil penalty of up to \$1,000 for any violation of this requirement. The banking commissioner can already impose these sanctions for violations of the banking statutes.

The bill imposes similar requirements for real estate brokers and salespersons. In this context, the term is defined to include the refusal or intentional failure to refer a homebuyer, or encouraging other real estate brokers or real estate agents not to refer a homebuyer, to a mortgage broker or lender based solely on the fact that the broker or lender uses an appraiser who has provided an appraisal reflecting a fair market value estimate that was less than the sale contract price. The bill allows the Department of Consumer Protection commissioner to take the same action against a real estate salesperson or broker violating this requirement that the banking commissioner can take against mortgage brokers.

## **§ 9 - NONPRIME LOANS**

### ***Definition of Nonprime Loan***

The bill defines a “nonprime loan” as any loan or extension of credit, excluding both an open-end line of credit secured by the consumer's dwelling and a reverse mortgage transaction:

1. where the borrower is an individual;
2. the proceeds of which are to be used primarily for personal family or household purposes;
3. secured by a mortgage on a one-to-four family residential property located in this state which is, or when the loan is made intended to be, used or occupied by the borrower as a principal residence; and
4. where the principal amount of the loan does not exceed the then current conforming loan limit, as established from time to time by the Federal National Mortgage Association (Fannie Mae).



With regard to interest, nonprime loans are those where the difference between the annual percentage rate (APR) for the loan or extension of credit and the yield on United States Treasury securities having comparable periods of maturity is either equal to or greater than three percentage points on first mortgage loans, or five percentage points on second mortgage loans. The bill requires the difference between the APR and the yield to be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirement of the federal Home Mortgage Disclosure Act, as amended from time to time, provided the yield on United States Treasury securities is determined as of the 15th day of the month prior to the application for the loan.

Additionally, non prime loans are those where the difference between the APR for the loan and the conventional mortgage rate is either equal to or greater than 1.75 percentage points if the loan is a first mortgage, or 3.75 percentage points if it is a second mortgage. The bill specifies that the conventional mortgage rate is the most recent daily contract interest rate on commitments for fixed-rate mortgages published by the board of governors of the Federal Reserve System in its statistical release H.15, or any publication that may supersede it, during the week in which the interest rate for the loan is set.

The bill that provides that, with regard to the interest rate calculations, the dollar amount of any bona fide discount points does not have to be included in the APR. The bill defines these as points that a borrower agrees to pay for the express purpose of reducing the interest rate and that actually result in a bona-fide interest rate reduction (although this term is not defined).

### ***Fiduciary Duty***

It specifies that the fiduciary duty owed to nonprime home loan borrowers established by the bill includes the obligation to ensure that borrowers have enough information to clearly understand the terms of the loan and the associated risks in order to make an informed choice. Additionally, the bill specifically includes as a duty, but does not limit

duty to, the requirements of the bill.

### ***Suitability Standard and Required Course***

The bill requires the banking commissioner to adopt regulations to establish (1) a suitability standard that lenders and mortgage brokers must use to determine which nonprime home loan products are most suitable for borrowers and (2) the minimum verification and documentation requirements for qualifying borrowers for a nonprime home loan. The regulations must include a mandate (1) that lenders verify income by the best means of documentation available, including at least, payroll receipts, bank records, tax returns, or other similar reliable documents and (2) that lenders consider the reasonable ability of the borrower to repay the nonprime home loan according to a fully amortizing payment schedule and taking into account all requirements of the loan.

Lenders must notify all potential nonprime home loan borrowers in writing that they are required to attend a DOB-accredited course on nonprime home loans and provide evidence of course completion before the mortgage can be executed. The commissioner must adopt regulations on accrediting these courses and for issuance of completion certificates by entities providing the courses.

### ***Elements Necessary to Make a Nonprime Loan***

The bill prohibits a lender from making a nonprime loan unless:

1. it documents, in accordance with the bill, that the borrower qualifies for the loan at its highest interest rate over the term of the loan;
2. it requires and collects the monthly escrow of property taxes, insurance, and homeowners' or condominium fees;
3. the potential borrower completes the required courses, as evidenced by certificates of completion;
4. it provides the notice required by the bill, which provides basic

information about mortgage loans; and

5. it discloses a list of nonprofit housing counselors approved by the federal Department of Housing and Urban Development to all potential borrowers.

### ***Provisions Prohibited in a Nonprime Loan***

The bill prohibits a lender from making a nonprime loan that contains a prepayment penalty provision or a provision that increases the interest rate after default. It also prohibits any provision requiring a borrower to assert any claim or defense in a forum that (1) does not have to adhere to the rules of evidence or apply the law as set forth in the statutes or common law; (2) limits any claim or defense the borrower may have; or (3) is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring a claim or defense.

### ***Correcting Loans Executed in Violation of the Nonprime Provisions***

The bill provides that any nonprime home loan executed in violation of its requirements is generally considered a breach of fiduciary duty and an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (see BACKGROUND). But these provisions do not apply if, within 90 days of the loan closing and before any action against the lender, (1) the lender notifies the borrower of the compliance failure; (2) the lender tenders appropriate restitution; and (3) the lender offers, at the borrower's option, either to make the nonprime home loan comply with the bill's requirements or to change the terms of the mortgage to benefit the borrower so that the mortgage will no longer be considered a nonprime home loan. The lender must act within a reasonable period of time following the borrower's election of remedy.

The loans will also not be in breach or violation (1) if the compliance failure is not intentional and results from a bona fide error that occurs despite the maintenance of procedures reasonably adopted to avoid

such errors and (2) within 120 days of the discovery of the compliance failure and prior to the commencement of any action against the lender, the borrower is notified of the compliance failure, the lender tenders appropriate restitution, and makes the same offer as above. The bill specifies that a bona fide error includes a clerical, calculation, printing, computer malfunction or programming error, but does not include an error of legal judgment with respect to a person's obligations.

## **EDUCATION AND BONDING REQUIREMENTS FOR MORTGAGE BROKERS**

### ***On-line Continuing Education for Entities in the Mortgage Lending Business (§ 16)***

The bill requires the banking commissioner to, by January 1, 2009, adopt regulations establishing an on-line continuing education program for entities in the mortgage lending business that are required to be licensed under the banking statutes. The bill makes DOB solely and exclusively responsible for the provision of the courses. It requires the regulations to set out the required subject matter and course hours, which must be no more than eight hours of course study over the course of one calendar year, or 12 hours of course study over the course of two calendar years for any licensee. The licensees are responsible for cost of completing the requirement.

### ***Surety Bond Requirement (§ 20)***

The bill increases, from \$40,000 to \$60,000, the surety bond that a mortgage lender or first mortgage broker applicant must file starting on January 1, 2009.

## **§ 18 - BANKING COMMISSIONER'S ENFORCEMENT POWERS**

The bill specifically requires the banking commissioner to enforce all of the bill's mortgage provisions (excluding the provisions on real estate brokers and salespersons and tenants in a property subject to foreclosure.) It specifically grants him the following powers and duties to do so.

1. The commissioner may adopt regulations necessary to carry out

the provisions, and prohibit acts, practices or terms in connection with mortgages that the commissioner finds are: (a) unfair, deceptive, or designed to evade the bill's provisions; and (b) associated with abusive, unfair, or deceptive lending practices or that are otherwise not in the interest of the borrowing public.

2. The commissioner must conduct examinations and investigations and issue subpoenas and orders to enforce the provisions with respect to lenders or brokers.
3. The commissioner may examine any instrument, document, account, book, record, or file of a lender or mortgage broker. He must recover the cost of examinations from the person. A person making or brokering mortgage loans must maintain its records in a manner that will facilitate the commissioner's determination of whether the person is complying with the bill's provisions and any associated regulations. The commissioner must require the submission of reports by lenders or mortgage brokers that include information he requires in regulation.
4. If a person fails to comply with a commissioner-issued subpoena for documents or testimony, he can request an order from a court of competent jurisdiction requiring the person to produce the requested information.
5. If the commissioner determines that a person has violated the provisions, he may do any combination of the following that he deems appropriate: (a) in accordance with existing law, bring a Superior Court action for a permanent or temporary injunction, restraining order, or writ of mandamus, seek a court order imposing a penalty of up to \$100,000 per violation, or apply to the Superior Court for an order of restitution; (b) suspend, revoke or refuse to renew any license issued by the DOB; (c) prohibit or permanently remove an individual responsible for a violation from working in his or her present capacity or in any

other capacity related to activities regulated by the department; (d) order a person to cease and desist any violation and make restitution and other appropriate relief, including loan modification or forgiveness, to borrowers; or (e) impose a remedy he deems appropriate.

The bill provides that no action taken by the commissioner against a creditor relieves that creditor from civil liability. It prohibits the foregoing provisions from being construed as a limitation on the power or authority of the state, the attorney general or the commissioner to seek administrative, legal, or equitable relief under common law or the statutes. It also provides that these remedies are cumulative and do not restrict any other right or remedy otherwise available to the borrower.

## **§ 19 - WORKFORCE DEVELOPMENT BOARDS**

The bill requires workforce development boards to establish a Mortgage Crisis Job Training Team, in conjunction with CTWorks One-Stop Career Centers, to provide rapid, customized employment services, job retraining and placement assistance for the unemployed or underemployed. The team must also provide financial literacy and credit repair training.

## **BACKGROUND**

### ***CHFA Bond Covenants***

The proceeds of all CHFA bonds are jointly pledged under its General Bond Resolution. This resolution constitutes a contract with CHFA bondholders. By law, the state pledges that it “will not limit or alter the rights hereby vested in the authority until such obligations, together with the interest thereon, are fully met and discharged and such contracts are fully performed on the part of the authority” (CGS § 8-261). This pledge is included in the CHFA General Bond Resolution. The transfer of CHFA bond proceeds that have been pledged to be used for CHFA programs under the statutes and for payment of debt service on the bonds could violate the impairment of contracts clause of the U.S. Constitution (Article I, Section 10). The U.S. Supreme Court

has held that the purported repeal by a state of a state covenant for the benefit of bondholders was an unconstitutional impairment of the contract (See *United States Trust Company of New York v. New Jersey et al*, 431 U.S. 1 (1977)).

### **Foreclosure Moratoriums**

In 1933, the Minnesota legislature enacted, and the U.S. Supreme Court upheld, a law imposing a temporary foreclosure moratorium during the Great Depression. In upholding the legislation under the Contracts Clause (Article I, Section 10) of the U.S. Constitution, the Court found an emergency justifying the exercise of the state's police powers and a legitimate end protecting a societal interest. The Court noted the temporary nature of the act and that the mortgage indebtedness was not impaired (*Home Building & Loan v. Blaisdell*, 290 U.S. 398 (1934)). It is not clear how that ruling applies to the bill.

### **Connecticut Unfair Trade Practices Act (CUTPA)**

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer Protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$ 5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

### **Related Bill**

sSB 5023, reported favorably by the Banks Committee, requires initial and renewal applicants for the first- and second-mortgage broker and originator licenses to meet certain education and testing requirements.

## **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 10    Nay 7    (03/04/2008)