CT FAIR HOUSING CENTER

TESTIMONY OF ANDREW G. PIZOR REGARDING
BILL NO. 21
AN ACT CONCERNING MORTGAGE LENDING

My name is Andrew Pizor. I am a staff attorney at the Connecticut Fair Housing Center. Prior to joining the Center, I represented the victims of predatory lending and defended foreclosure actions in private practice. The Fair Housing Center has recently expanded its traditional focus on fighting housing discrimination in the rental and homesales market to add new efforts to address the ongoing subprime lending crisis because of its extensive impact on minority homeowners. In that regard, I thank you for the opportunity to testify today regarding Bill No. 21, An Act Concerning Mortgage Lending.

The Fair Housing Center's overall impression of this bill is favorable. Listing the portions of the bill with which we agree with would take far longer than time allows today. There are, however, a few areas in which we believe Senate Bill No. 21 could be strengthened. Our global concerns about the bill, as currently drafted, are that it lacks a private right of enforcement and does not sufficiently alter the incentive structure that created the subprime/foreclosure crisis.

1. Silence on Yield Spread Premiums: Mortgage brokers earn yield spread premiums from lenders when they charge the borrower a higher interest rate than that for which the borrower might otherwise have qualified. S.B. 21 leaves yield spread premiums unregulated. These kickbacks reward brokers for working against the interests of homeowners. We recommend either banning YSPs, or adding them to the definition of Prepaid Finance Charges as North Carolina does in its subprime lending statute.

2. Silence on Nontraditional Mortgages: Mortgages that allow borrowers to defer payment of principal or interest are already overused and abused, and will become the next financial calamity if left unregulated. While some sophisticated borrowers may understand the risks inherent in these loan products, the vast majority of the borrowers who currently have these loans neither understood the terms of the loan they were given nor are able to refinance out of them into a more appropriate loan product. We recommend prohibiting prepayment penalties and other risk layering features in nontraditional mortgages, requiring escrow, and requiring verification of the borrowers' ability to repay the debt at final maturity at the fully indexed rate, assuming a fully amortizing payment schedule.

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3. No Clear Private Right Of Action/No Clear Assignee Liability: Borrowers must have legal rights that they can enforce in court. Under the current laws, wronged borrowers have few defenses to foreclosure. A necessary piece of any meaningful reform is making mortgage brokers, originators and lenders accountable to consumers through an express private right of action. At the very least, when creditors attempt to foreclose on mortgages that violate the law, borrowers should be able to use the law to defend themselves and their homes. Connecticut is recognized as a nation-wide leader in its willingness to regulate high cost and abusive loans. Adding a private right of action to the Department of Banking bill would put the State in the company of other states with similar laws such as Arkansas, Georgia, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, and South Carolina.

4. Additionally, limited assignee liability is a necessary component. Limited, i.e. quantifiable, assignee liability will allow for mortgage-backed securities to be rated yet will reward purchasers' due diligence. We recommend adding provisions allowing all assignees, and other forms of transferees, to be held liable to the same extent as the original lender for a limited number of key provisions, but with liability capped at the amount required to extinguish the borrower's liability, including costs and fees. Without at least some investor incentive to ensure compliance with Connecticut law, we have fundamental concerns about the ultimate efficacy of the Department's proposal.

4. Lack of Duties: Unlike the mortgage market 20 years ago, there has been a disconnect between the reward of the loan (upfront points and fees in the subprime market) and the risk of the loan. The dominant origination channels in the mortgage market today are non-bank lenders, who rarely hold loans, and mortgage brokers. These players have little financial incentive in seeing a loan succeed they way a bank portfolio lender would. Accompanied by ability to repay standards and limits on upfront points and fees, legal duties will address the contemporary market's contradictory incentives and lack of accountability. We recommend giving brokers a duty to act in the best interest of the borrower. This would be the type of duty that real estate agents and stock brokers already owe their clients.

The Connecticut Fair Housing Center has worked with nationally recognized experts, as well as local practitioners working with homeowners in Connecticut, to create legislation that addresses the causes of the subprime crisis which is rocking both the domestic and international financial markets. The bill proposed by the Center is similar in many ways to that being discussed here today. However, the changes I have outlined will create a clear and consistent set of minimum underwriting standards that will not only protect borrowers but will reduce uncertainty and increase loan approvals in the subprime market. The Center's research and work with other lending advocates, as well as studies on the impact of regulation in the subprime market demonstrate that such a law will not hurt the financial markets and may in fact help revive them.[i]

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[i] Statement by Governor Randall S. Kroszner, (Dec. 18, 2007)
Wei Li and Kieth Ernst, *Do State Predatory Lending Laws Work? A Panel Analysis of Market Reforms*, 18:2 Housing Policy Debate at 384 (2007).
Li and Ernst, *The Best Value in the Subprime Market*, at 13 (Center for Responsible Lending, 2/23/06).
Roberto G. Quercia, Michael A. Stegman, and Walter R. Davis, *Assessing the Impact of North Carolina's Predatory Lending Law*, 15:3 Housing Policy Debate, (2004) at 587-89.
Bostic, Engel, McCoy, et al. "State and Local Anti-Predatory Lending Laws: The Effect of Legal Enforcement Mechanisms" http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005423.