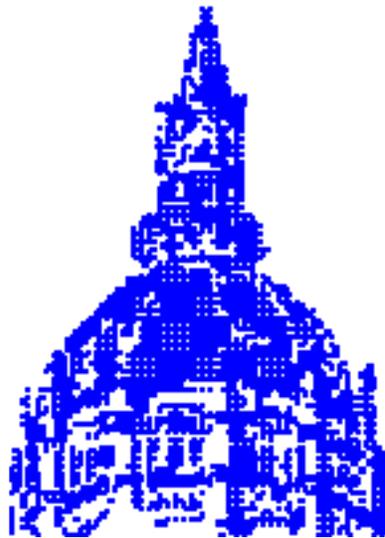


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ACTS AFFECTING
— SENIORS —

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SUMMARY

The biggest news for seniors is the increase in ConnPACE income limits starting April 2002, approved during the June Special Session (JSS). If the state obtains federal approval and funding, the legislature has also scheduled an additional rise in the income caps for July 2002.

Other significant new acts affecting seniors:

- Make it harder for (1) people to transfer their assets or create trusts to become eligible for Medicaid coverage of nursing home or other long-term care and (2) the probate court in conservatorship hearings to make exceptions to Medicaid limits on what a spouse still living at home can keep when the other spouse goes to a nursing home.
- Address nursing home issues, including (1) rate increases (2) giving the Department of Social Services (DSS) commissioner an option to provide future rate relief to enhance staffing, (3) extending the moratorium on new nursing home beds to 2007, and (4) making it easier for nursing home residents who go to the hospital or on home leave to have their nursing home beds held for them.
- Expand the Long-Term Care Planning Committee's mission beyond just seniors by including everyone who needs long-term care, with an emphasis on care in community settings and more support for family caregivers.
- Increase funding for Alzheimer's respite care and adult daycare.
- Strengthen the DSS commissioner's powers in elder abuse cases.
- Continue the freeze on State Supplement program benefits.
- Continue state-funded medical, home care, food stamp, and other programs for legal immigrants ineligible for federally funded programs, but prohibit new applications after mid-2002.

Not all provisions of the acts are included here. Complete summaries of all public acts passed in the 2001 session will be available in early fall when OLR's *Public Act Summary* book is published; some are already on OLR's webpage (<http://cgalites/olr/pa2001draft/01palist.htm>). Readers may obtain the full text of acts that interest them from the Connecticut State Library, the House Clerk's Office, or the General Assembly's website (<http://www.cga.state.ct.us/default.asp>).

PRESCRIPTION DRUGS

ConnPACE Expansion

ConnPACE income limits are increased from the current \$15,100 and \$18,100 for single and married applicants, respectively, to \$20,000 and \$27,100, *beginning April 1, 2002*. But if DSS receives a federal waiver for federal funding, these limits will rise to \$25,800 and \$34,800, respectively, effective July 1, 2002. The act permits the DSS commissioner to accept applications from people who will qualify under the April limits beginning January 1, 2002. Existing law, which the act does not change, still requires the commissioner to adjust the income limits each year by the Social Security inflation adjustment. ConnPACE (Connecticut Pharmaceutical Assistance Contract to the Elderly and Disabled) helps low-income seniors and people with disabilities who do not qualify for Medicaid pay for prescription drugs; participants pay a \$25 annual enrollment fee and a \$12 copay per prescription. *(PA 01-2, JSS, § 22, effective July 1, 2001)*

Retired Hospital Employees To Obtain Drugs At Hospitals

Hospitals will now be able to sell prescription drugs to their retired employees and their spouses if such sales are

provided for in the employees' retirement or pension plans. They can already do this for active employees and their families. *(PA 01-65, effective upon passage)*

MEDICAID ASSET TRANSFERS

A new law makes it harder for people to transfer their assets to someone else or put assets in a trust so that Medicaid will cover their nursing home, home care, or other long-term care services.

The act tightens the asset transfer rules by:

1. defining what is an "available asset" that must go to pay for the person's care and specifying that a trustee's refusal to distribute funds from a trust does not automatically make them unavailable;
2. limiting allowable asset transfers for "other valuable consideration" just to those where that consideration (such as services rendered to keep the person out of a nursing home) has a value equal to or greater than the transferred assets;
3. requiring DSS to seek a waiver of federal Medicaid law to start the penalty period for illegal asset transfers (during which the person is ineligible for

- Medicaid) on the date a nursing home resident applies for Medicaid rather than on the transfer date (currently, some people can avoid the penalty by delaying their Medicaid applications until the penalty period has expired; this will not be possible for transfers made after the waiver takes effect);
4. limiting the probate court's powers, in conservatorship hearings, to make exceptions to the Medicaid asset transfer rules and to exceed limits on the assets a nursing home resident's spouse can keep in cases of financial duress or when higher amounts are needed to generate income for the spouse still living at home;
 5. making DSS the sole agency to determine eligibility for assistance and services under any DSS-administered programs;
 6. requiring the probate courts, as well as the people applying for spousal support orders in conservatorship cases, to provide certain notices and information to DSS, and giving DSS the right to appear at such hearings to present the department's position; and
 7. prohibiting the probate court from approving any spousal support

applications unless the required notices have been made and the decision is consistent with state and federal law.

Under federal and state Medicaid law, there is already a "look back" period of 36 months for most asset transfers, and five years for transfers to most trusts. When a nursing home resident applies for Medicaid, DSS looks back from that date and, if the person has made an illegal transfer of assets, delays coverage using a formula that takes into account the asset's uncompensated value and the average cost of nursing home care. There are exceptions that allow certain kinds of transfers within the look back period. (*PA 01-2, JSS, §§ 3-6, effective July 1, 2001*)

NURSING HOMES

Staffing Levels

For FYs 2002-03 and 2003-04, the DSS commissioner can, within available appropriations, provide rate relief to enhance staffing in nursing homes. If she provides such relief, priority for available funding will be given to those nursing homes whose staffing ratios are below the following levels:

- for the first year, two daily hours of care per patient from nurse's aides, .75 hour from registered and

licensed nurses, and 2.75 hours total care, and

- for the second year, two daily hours of care per patient from nurse's aides, one hour from registered and licensed nurses, and three hours total care.

These are, respectively, the minimum and preferred staffing levels suggested in phase 1 of a study sponsored by the federal Department of Health and Human Services. (*PA 01-2, JSS, §§ 1-2, effective October 1, 2001*)

Rate Increase

A new law increases the Medicaid rates for nursing homes by 2.5% in FY 2001-2002, and 2% in FY 2002-03.

The act also requires DSS to add fair rent increases to the rate increases for nursing homes that have undergone a material change in circumstances related to fair rent. Under prior law, the DSS commissioner could exclude fair rent from a home's overall rate increase cap. (*PA 01-2, JSS, § 52, effective July 1, 2001*)

Certificates of Need (CON)

Moratorium. The legislature extended the CON moratorium on new nursing home beds for another five years up to June 30, 2007. Exceptions to the moratorium are still permitted, including one that allows DSS to grant CONs when beds are relocated from one facility to

another and certain other conditions are met, such as ensuring that there will be no adverse effect on bed availability in an area of need. (*PA 01-2, JSS, effective July 1, 2001*)

Bed Conversions—ICF to SNF. Between July 1, 2001 and the moratorium's end on June 30, 2007, this same act permits intermediate care facility (ICF) nursing home beds that are under common ownership with skilled nursing facility (SNF, a higher level of care) beds in the same or immediately adjacent buildings to be converted to SNF beds, in accordance with the CON requirements. The conversions cannot cost the state more than 12% of the amount it previously paid to the home for both care levels. Conversions of ICF beds in freestanding facilities and beds that are transferred to another licensed and certified nursing home are allowed during this period subject to the law's CON requirements, and are not subject to this limit, nor are conversions for which homes have applied for CONs on or before May 1, 2001. (*PA 01-2, JSS, § 54, effective July 1, 2001*)

CONs for Beds Associated with Continuing Care Retirement Communities (CCRCs). By law, nursing home beds associated with CCRCs are not subject to the CON moratorium, but the DSS commissioner must determine,

among other things, whether there is a clear public need for any new beds. A new law requires her, in making such determinations, to consider only the need for beds for current and prospective residents of the CCRC.

Under prior law, the commissioner could not grant requests for additional CCRC nursing home beds unless there was a demonstrated need in the town of the proposed location and within a 20-mile radius. Under this act, the commissioner, when considering whether there is a clear public need, must consider only a 15-mile radius for bed relocations and none when the beds are new.

And the act also makes other changes in how the commissioner projects future bed need. *(PA 01-2, JSS, § 63, effective July 1, 2001)*

Nursing Home Bed Holds

A new law removes the limitation that a Medicaid-covered nursing home resident who goes to the hospital or on home leave must be expected to return to the same level of care in order for the home to hold the bed for him. Under the change, the home must hold the bed for the currently required 15 days for hospital stays and 21 days for home leave as long as it expects the resident to return to the facility within that time, even if not to the same care level.

Medicaid pays for the bed as long as the home's vacancy rates do not exceed certain thresholds. The new act removes the requirements that the vacancy rates must be calculated based on beds available at the same level of care that the resident was at when he left. *(PA 01-2, JSS, §§ 64-65, effective July 1, 2001)*

Occupational Therapy in Nursing Homes Study

The DSS commissioner, in consultation with the Department of Public Health (DPH), must study costs and savings related to requiring occupational therapy services in nursing facilities. The commissioner must submit the report to various legislative committees by February 1, 2002. *(PA 01-4, JSS, § 15, effective, July 1, 2001)*

LONG-TERM CARE PLANNING COMMITTEE

New legislation broadens the Long-Term Care Planning Committee's scope to include all people in need of long-term care instead of only the elderly. (The committee's original charge, when the legislature created it in 1998, was to exchange information on elderly long-term care issues, coordinate policy development, establish a statewide long-term care plan for the elderly, and conduct studies

of related issues.) The act further requires the committee to evaluate long-term care issues in light of the U.S. Supreme Court decision in *Olmstead v. L.C.*, which requires states to place people with disabilities in community settings rather than in institutions when it is appropriate, the individual does not oppose the transfer, and the community placement can be reasonably accommodated.

In addition, the act:

1. requires the committee's long-term care plan to serve as a guide for state agencies' programs that serve people in need of long-term care; and
2. requires any state agency, when developing or modifying any program that, wholly or partially, assists or supports people with long-term care needs to include, to the extent feasible, features that (a) support care-giving by family members and other informal caregivers and (b) promote consumer-directed care.

The act adds two new members to the committee: one representative of the Department of Children and Families (DCF) and the executive director of the Office of Protection and Advocacy for Persons with Disabilities. And it requires the committee to issue its long-term care plan every

three years instead of every two. (*PA 01-119, effective July 1, 2001*)

ALZHEIMER'S RESPITE CARE

The legislature appropriated an additional \$250,000 to the Alzheimer's respite care program for both FYs 2001-02 and 2002-03. Last year's appropriation was \$1.12 million. (*SA 01-1, JSS*)

HOME CARE AND ADULT DAY CARE

Rate Increase

The budget contains a 2% increase in rates the Connecticut Home Care Program for Elders (CHCPE) pays to home care agencies for FY 2001-02 and 1.5% for FY 2002-03. Adult day care center rates increase by about 4% for FY 2001-02.

CHCPE—Pilot for People With Excess Income

The legislature continued a small CHCPE pilot program until the state receives federal approval for Medicaid coverage for the participants. The program is for up to 10 people whose monthly income exceeds the home care program limits by no more than \$100. Prior law would have ended the pilot on July 1, 2001 if Medicaid had not covered these individuals by then. (*PA 01-2, JSS, § 31 effective July 1, 2001*)

ELDER ABUSE

A new law strengthens the DSS commissioner's powers in elderly protective services cases. It requires her to investigate, rather than evaluate, allegations of elder abuse, neglect, exploitation, and abandonment. The act gives DSS elderly protective services staff more authority to interview the potential elderly victim alone. It lets the commissioner seek a court order to stop a caretaker from interfering with the interview. It also allows her to subpoena witnesses, take testimony under oath, and compel the production of documents necessary and relevant to investigations. It lets her subpoena confidential records needed for investigations if she reasonably believes the elderly person is not capable of giving consent or if the person's caretaker has refused consent and the commissioner reasonably believes the caretaker has abused, neglected, exploited, or abandoned the person. The act authorizes the commissioner to ask the attorney general to seek a court order as appropriate to enforce the new law.

The act allows financial institutions to disclose otherwise confidential information if an elderly person or his representative consents. It specifies that the institution has

no obligation to determine the person's capacity to consent.

In addition, the act requires the probate court, when the commissioner is seeking conservatorship in an elder abuse case, to approve her request for an examination by an independent physician, psychologist, or psychiatrist if it is (1) needed to determine whether the person is capable of managing his own affairs and (2) in the person's best interests. Under the act, the court must order the examination even if the elderly person or his caretaker has already submitted a medical report. *(PA 01-209, effective July 1, 2001)*

The act also allows people who reasonably suspect such abuse to report it to the commissioner. They can already do so if they reasonably believe abuse is happening.

FINANCIAL ASSISTANCE

Cost-of-Living (COLA) Freezes

An act continues to freeze benefit levels in the State Supplement Program, which provides benefits to some very low-income seniors and disabled people, from July 1, 2001 through June 30, 2003. (It also freezes benefits for several other public assistance programs, most of which do not affect the elderly). *(PA 01-2, JSS, §§ 55-56, effective July 1, 2001)*

Immigrant Welfare and Medical Programs

New legislation keeps solely state-funded welfare programs open for legal immigrants who are barred from federally funded programs, but prohibits new applications after June 30, 2002. The affected programs of most interest to such seniors are state-funded medical assistance equivalent to Medicaid and the Connecticut Home Care Program for the Elderly. Other affected programs include cash assistance under Temporary Family Assistance and State-Administered General Assistance (SAGA), SAGA medical aid, town general assistance, and HUSKY Part B (the state's children's health insurance program). But those who are victims of domestic violence or have mental retardation will be exempt from the bar on new applications. *(PA 01-2, JSS, § 17, 19, as amended by PA 01-9, JSS, §§ 108, 109, 110, 111, 112, 126, 127, effective July 1, 2001)*

This legislation also applies the bar on new applications after June 30, 2002, to the state-funded food stamp program, which serves legal immigrants (including seniors) who are not eligible for the federal food stamp program. *(PA 01-2, JSS, § 18, effective upon passage)*

The budget contains \$1 million for continued intake for the food stamp program and \$2 million to keep the other

programs open until June 30, 2002. Up to half of the \$2 million will continue to be available to spend for this purpose in FY 2002-03. *(SA 01-1, as amended by PA 01-9, JSS, § 126, effective July 1, 2001)*

ASSISTED LIVING

Expansion in Federal Senior Housing

A new law doubles, from two to four, the number of federally funded elderly housing developments where the economic and community development commissioner can establish assisted living demonstration programs. Multiple properties with overlapping board membership or ownership will be considered as a single applicant. *(PA 01-2, JSS, § 36, effective July 1, 2001)*

Demonstration in State-funded Affordable Housing

The legislature removed a June 8, 2001 deadline for accepting applications under the assisted living demonstration program in state-funded affordable elderly housing. The program, first authorized in 1998, allows up to 300 subsidized dwelling units in five locations. The five locations have been approved, but they are not yet operating. One of the approved locations has recently withdrawn and a new request for

proposals will have to be issued. (PA 01-2, JSS, § 37, effective July 1, 2001)

Residential Care Homes (RCH)

A new law increases state financial support to RCHs through adjustments in their State Supplement Program (SSP) rates. For the rate year beginning on July 1, 2001, it increases the allowable base salary for administrators in homes with 60 or fewer beds from \$30,000 to \$37,000. By law, these base salaries are adjusted each year for inflation. It requires DSS to base rates on this higher salary, even if the RCH did not spend this money in the 2000 cost report period, upon which the 2001-02 rate is based.

It also increases the inflation adjustment by 1% for the RCH's dietary, laundry, housekeeping, and related wage costs, beginning with the rate year 2001-02. (PA 01-2, JSS, § 38, effective July 1, 2001)

HEALTH INSURANCE

Screenings for Certain Cancers and Clinical Trials

For those seniors with individual or group health insurance, a new law makes a number of changes to minimize out-of-pocket expenses for cancer-related screenings and participation in clinical trials. It requires individual and group

health insurance policies to cover colorectal cancer screenings and pap smear tests (for cervical cancer screenings) conducted as part of primary and preventive ob-gyn services for female enrollees who choose to have direct access to these providers. It also requires certain group and individual health insurance policies to cover routine patient costs associated with clinical trials for treatment or palliative care and Phase III trials (comparing new drug or surgical procedure to standard treatment) for prevention that involve therapeutic intervention. While the act is of interest to seniors who have group or individual health insurance, it does not apply to Medicare supplement insurance, for which the requirements are set by federal law. (PA 01-171, effective October 1, 2001 for screenings coverage and January 1, 2002 for clinical trial coverage).

CHOICES Health Insurance Assistance Program

The legislature updated and made some minor changes in the laws concerning the CHOICES health insurance assistance program. The act (1) specifies that the program must be a comprehensive Medicare advocacy program that not only provides information and advice for Medicare beneficiaries, but also legal representation where appropriate in the appeals

process; (2) allows non-attorneys to give advice on Medicare benefits and other health insurance matters on the program's toll-free phone number; and (3) specifies that the program must include any functions DSS deems necessary to conform to federal grant requirements. These changes reflect current practice and the cooperative roles in the program of the Center for Medicare Advocacy and the area agencies on aging.

The "CHOICES health insurance assistance program" offers seniors health insurance information and counseling, as well as information on the various Medicare fee-for-service and managed care plans. It is part of a collection of senior programs run by CHOICES, which is located within DSS' Division of Elderly Services. (CHOICES stands for Connecticut's programs for Health insurance assistance, Outreach, Information and referral, Counseling, and Eligibility Screening.)

The act also makes several minor changes in the insurance commissioner's responsibilities related to the Medicare Consumer Guide, which the CHOICES health insurance assistance program issues annually. *(PA 01-39, effective upon passage)*

TAXES

Elderly And Disabled Circuit Breaker, Renter's Rebate, And Elderly Tax Freeze Programs

A new law makes uniform the conditions under which the Office of Policy and Management (OPM) secretary can extend the deadline for applications under several elderly property tax relief programs. Basically, it lets him extend the deadline for (1) people certified by a doctor as having been ill or incapacitated because of extenuating circumstances and (2) good cause.

The act makes a number of changes in procedures and deadlines for reconsiderations, appeals, and hearings for these programs. It also reduces the penalty for making false statements on an application in the elderly tax freeze and renter's rebate programs. Under prior law, a claimant faced a fine of up to \$500, imprisonment of up to one year, or both. Now there will be no prison term. *(PA 01-6, JSS, §§ 46, 50-54, as amended by PA 01-9, § 98, 101, 102)*

Income Tax Credits For Trusts And Estates

This same act applies Connecticut income tax credits for income tax payments to other states to resident trusts and estates and part-year resident trusts. *(PA 01-6, JSS, § 68)*

Sales Tax Exemption For Caskets For Cremation

The same new law expands an existing sales tax exemption for burial caskets to also cover caskets used for cremation, regardless of who sells them and how much they cost. Property funeral homes use in preparing for and conducting burials and cremations is already tax-exempt, up to a maximum of \$2,500 per funeral. *(PA 01-6, JSS, § 61)*

RELATIVE CAREGIVER LICENSING

Starting July 1, 2001, relatives (including grandparents) who accept placement for more than 90 days of a child in the Department of Children and Families' (DCF) custody will have to be licensed as foster parents. The act grandfathered relatives who were DCF-certified as relative caregivers before July 1. It also allows the DCF commissioner, on a case-by-case basis, to waive some foster-care licensing procedures or standards for a child placed with a relative. Previously, DCF could place children with relative caregivers under more relaxed rules than those required for non-relative foster parents. *(PA 01-70, PA 01-159, PA 01-142, effective July 1, 2001)*

MISCELLANEOUS

Removal of a Fiduciary

This act, among other provisions, allows the probate court to remove a fiduciary administering an estate if:

1. lack of cooperation among cofiduciaries substantially impairs the estate's administration;
2. the court determines that removal best serves the beneficiaries' interests because of the the fiduciary's unfitness, unwillingness, or persistent failure to administer the estate effectively;
3. there has been a substantial change in circumstances; or
4. all beneficiaries request the removal and the court finds that (a) removal best serves the beneficiaries' interests and is consistent with their governing instrument's purposes and (b) a suitable cofiduciary or successor fiduciary is available.

A probate court may already remove a fiduciary for a number of other reasons. *(PA 01-114, effective October 1, 2001)*

Priority For Seniors In Claims Commissioner Hearings

People who seek permission to sue the state, with certain exceptions, must first apply to the claims commissioner. The commissioner can approve immediate payment of certain small claims, and, for larger claims, authorize a lawsuit or make recommendations to the General Assembly concerning payment or permission to sue. This new act gives priority for hearing assignment before the claims commissioner to claims by (1) people over age 64 or who reach age 65 while their claim is pending, (2) executors and administrators of estates, and (3) terminally ill people. *(PA 01-167, effective October 1, 2001)*

Protection of Social Security and Veterans' Benefits from Removal From Bank Accounts

By law, a creditor may obtain a court-ordered judgment against someone who owes him money (the debtor). The creditor may execute or serve an order on any bank where the debtor has an account. Unless the debtor claims that money in the account is exempt from execution, the bank must release the amounts owed to the creditor.

This new law requires banks served with these orders to (1) leave \$800 in the debtor's account (or the entire account balance, if it is less than \$800) if

it recently received "readily identifiable" exempt Social Security or federal veterans' benefits by electronic direct deposit and (2) give the debtor access to that money. Banks can depart from this requirement if directed by any other law or by court order, and creditors can obtain court hearings if they reasonably believe that nonexempt funds have been withheld.

The act specifies that the requirement that banks leave this money in these accounts does not alter (1) the status of funds that federal or state laws exempt from execution, (2) the account holder's right to claim exemptions, or (3) the bank's other rights or obligations. It permits a bank to notify the creditor that it has left funds in the debtor's account as a result of the act's requirements and makes this notice prima facie evidence at court hearings that the funds are exempt.

Under the act, a bank must refund or waive all of its charges or fees, including dishonored check fees, overdraft fees, minimum balance service charges, and legal process fees for account holders if it paid exempt money to a creditor. *(PA 01-196, JSS, effective January 1, 2002)*

Cremation Authorization

This new act creates a procedure for adults to authorize

cremation of their remains. The Department of Public Health must authorize a form for this purpose, and funeral directors and others can reasonably rely on authorizations after making good faith efforts to notify interested parties.

The person authorizing cremation (the maker) must sign and date the form, and two witnesses must attest in writing that he was of sound mind when he signed it. The maker must also include the name, home address, and phone number of his spouse, or if there is none, next of kin or other person he designates to take custody of his remains.

After the maker's death, the funeral director must notify the designated person of the planned cremation during the legally required 48-hour waiting period. If this person is unavailable, the director must ask a probate court judge to give custody and control of the remains to some suitable person.

Under the act, a funeral director may obtain a cremation certificate and permit and cremate the body in good faith reliance on a cremation authorization if (1) he has made a good faith effort to notify the spouse, next of kin, or designated custodian or (2) a probate court has issued an order. His reasonable decisions and actions warranted under the circumstances cannot be

challenged. (*PA 01-131, effective October 1, 2001*)

Enhanced Benefits in MERF and the Police Officer and Firefighters' Survivors' Benefit Fund

This act makes several changes in the Municipal Employees' Retirement Fund B (MERF). it:

1. reduces the vesting period from 10 to five years;
2. increases the monthly MERF benefit beginning January 1, 2002, for employees eligible to receive Social Security;
3. allows employees who take voluntary retirement to begin receiving a cost of living adjustment (COLA) on the first July 1 after their retirement instead of after turning age 65;
4. changes the COLA percentage and formula for those retiring on or after January 1, 2002, and those who retire before January 1, 2002 and are not 65 years of age; and
5. allows municipalities to pay employee contributions on a pre-tax basis beginning January 1, 2002.

The act allows towns to participate, by contract, in the state's deferred compensation program under terms and conditions the comptroller sets.

It raises by 20% the monthly benefits from the Policemen and Firemen Survivors' Benefit Fund. The fund pays benefits to the surviving spouses and eligible dependents of municipal policemen and firemen. *(PA 01-80, effective October 1, 2001)*

Abusive Home Loan Lending Practices

While not aimed specifically at seniors, this new law will be of interest to them since abusive home lenders often target seniors. This act requires lenders to make certain disclosures to prospective borrowers seeking high-cost home loans, including the interest rate and the

consequences of mortgaging a home. It prohibits lenders from charging unwarranted or excessive fees or providing incomplete information. It also limits a lender's ability to sell credit insurance to a borrower. The act creates new penalties for lenders who violate its provisions. It prohibits lenders from charging a fee for the first payoff statement requested each year except when it is delivered on an expedited basis under an agreement with the borrower. *(PA 01-34, effective October 1, 2001)*

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