

Representative Wayne A. Harper proposes the following substitute bill:

MORTGAGE ACT AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill creates the "Utah High Cost Home Loan Act."

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ enacts provisions regarding prepayment penalties;
- ▶ places restrictions on financing of points and fees;
- ▶ places restrictions on the arbitration clause;
- ▶ prohibits single premium credit life insurance;
- ▶ places limitations on refinancing; and
- ▶ requires the lender to provide the borrower a full copy of all documents pertaining to the transaction.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

61-2d-101, Utah Code Annotated 1953



- 26 **61-2d-102**, Utah Code Annotated 1953
- 27 **61-2d-103**, Utah Code Annotated 1953
- 28 **61-2d-104**, Utah Code Annotated 1953
- 29 **61-2d-105**, Utah Code Annotated 1953
- 30 **61-2d-106**, Utah Code Annotated 1953
- 31 **61-2d-107**, Utah Code Annotated 1953
- 32 **61-2d-108**, Utah Code Annotated 1953
- 33 **61-2d-109**, Utah Code Annotated 1953
- 34 **61-2d-110**, Utah Code Annotated 1953
- 35 **61-2d-111**, Utah Code Annotated 1953
- 36 **61-2d-112**, Utah Code Annotated 1953
- 37 **61-2d-113**, Utah Code Annotated 1953
- 38 **70D-1-21**, Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **61-2d-101** is enacted to read:

42 **CHAPTER 2d. UTAH HIGH COST HOME LOAN ACT**

43 **61-2d-101. Title.**

44 This chapter is known as the "Utah High Cost Home Loan Act."

45 Section 2. Section **61-2d-102** is enacted to read:

46 **61-2d-102. Definitions.**

47 As used in this part:

48 (1) "Accelerate" means a demand for immediate repayment of the entire balance of a
49 residential mortgage loan.

50 (2) "Borrower" means a person that:

51 (a) seeks a high-cost mortgage; or

52 (b) is obligated under a high-cost mortgage.

53 (3) "High-cost mortgage" means a borrower credit transaction that is secured by the
54 borrower's principal dwelling, if any of the following apply with respect to such borrower
55 credit transaction:

56 (a) the transaction is secured by a first mortgage on the borrower's principal dwelling

57 and the annual percentage rate on the credit, at the consummation of the transaction, will
58 exceed by more than eight percentage points the yield on treasury securities having comparable
59 periods of maturity on the 15th day of the month immediately preceding the month in which
60 the application for the extension of credit is received by the lender;

61 (b) the transaction is secured by a junior or subordinate mortgage on the borrower's
62 principal dwelling and the annual percentage rate on the credit, at the consummation of the
63 transaction, will exceed ten percentage points the yield on treasury securities having
64 comparable periods of maturity on the 15th day of the month immediately preceding the month
65 in which the application for the extension of credit is received by the lender; or

66 (c) (i) the total points and fees payable at or before the transaction will exceed the
67 greater of 8% of the total loan amount or \$400;

68 (ii) the \$400 figure shall be adjusted annually on January 1 to match the adjusted
69 number adopted by the Board of Governors of the Federal Reserve in accordance with Section
70 226.32(a)(1)(ii) of the Code of Federal Regulations. If the Board of Governors of the Federal
71 Reserve System does not announce an adjusted figure, the last adjustment of the \$400 figure
72 shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price
73 Index that was reported on the preceding June 1; and

74 (d) the loan is made by or originated through a person or business required to hold a
75 license as provided in Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

76 (4) "Lender" means a person that:

77 (a) offers a high-cost mortgage; or

78 (b) extends a high-cost mortgage; and

79 (c) is required to have a license as provided in Title 61, Chapter 2c, Utah Residential
80 Mortgage Practices Act.

81 (5) "Prepay" or "prepayment" means to make a payment to a lender that:

82 (a) is more than the amount of the next scheduled payment due;

83 (b) pays more than half of the principal balance of the high-cost mortgage; and

84 (c) is paid more than 24 months before the last scheduled payment according to the
85 terms of the high-cost mortgage when it is made.

86 (6) "Residential mortgage transaction" means a transaction in which a mortgage, deed
87 of trust, purchase money security interest arising under an installment sales contract, or

88 equivalent consensual security interest is created or retained in the borrower's principal
89 dwelling to finance the acquisition or initial construction of that dwelling.

90 (7) "Reverse mortgage transaction" means a nonrecourse borrower credit obligation in
91 which:

92 (a) a mortgage, deed of trust, or equivalent consensual security interest securing one or
93 more advances is created in the borrower's principal dwelling; and

94 (b) any principal, interest, or shared appreciation or equity is due and payable (other
95 than in the case of default) only after:

96 (i) the borrower dies;

97 (ii) the dwelling is transferred; or

98 (iii) the borrower ceases to occupy the dwelling as a principal dwelling.

99 (8) "State chartered depository institution" means:

100 (a) a depository institution as defined by Section 7-14-1; and

101 (b) chartered by the state.

102 Section 3. Section **61-2d-103** is enacted to read:

103 **61-2d-103. Prepayment penalty.**

104 (1) The terms of a high-cost mortgage loan may contain terms under which a borrower
105 must pay a penalty for prepayment.

106 (a) However, a penalty for prepayment cannot be assessed more than 36 months after
107 the loan was originally made.

108 (b) The amount of the penalty may not exceed the total amount of interest paid at 80%
109 of the immediately preceding six scheduled payments.

110 (2) For purposes of this section, any method of computing a refund or unearned
111 scheduled interest is a prepayment penalty if it is less favorable to the borrower than the
112 actuarial method.

113 (3) Notwithstanding Subsection (1), a high-cost mortgage may not require a
114 prepayment penalty if:

115 (a) the high-cost mortgage is paid with the proceeds of a new loan by the same lender
116 or an affiliate of that lender; or

117 (b) the penalty is prohibited under other applicable law.

118 (4) If a prepayment does not pay the full amount owed on the high-cost mortgage when

119 the prepayment is made, the penalty shall be reduced by a percentage equal to the percentage of
120 the balance owed before the prepayment that remains unpaid.

121 Section 4. Section **61-2d-104** is enacted to read:

122 **61-2d-104. Negative amortization prohibited.**

123 A high-cost mortgage may not include terms under which the outstanding principal
124 balance will increase at any time over the course of the loan because the regular periodic
125 payments do not cover the full amount of the interest due.

126 Section 5. Section **61-2d-105** is enacted to read:

127 **61-2d-105. Financing points and fees -- Restrictions.**

128 (1) A lender may not, in connection with the formation or consummation of a high-cost
129 mortgage, finance, directly or indirectly, any portion of the points, fees, or other charges
130 payable to the lender or any third party in an amount in excess of 8% of the total loan amount,
131 unless the following additional disclosures are made to the borrower in conspicuous type size:

132 (a) "You are not required to complete this agreement merely because you have received
133 these disclosures or have signed the loan application."

134 (b) "If you obtain this loan, the lender will have a mortgage on your home. You could
135 lose your home or property, and any money you have put into it, if you do not meet your
136 obligations under this loan."

137 (c) "The timing and amount of payments on debts you already are carrying contribute
138 to the credit rating that is used to determine whether you may get a new loan and how much
139 you will pay for that new loan. You should not accept any advice to ignore or delay making
140 any payment on loans you already have, even if those loans will be paid off with the new loan."

141 (d) "You may get into serious financial difficulties if you use this loan to pay off old
142 debts and then run up other new debts."

143 (2) In addition to the disclosures required under Subsection (1), the lender shall
144 disclose to the borrower:

145 (a) in the case of any mortgage transaction:

146 (i) the annual percentage rate of the loan; and

147 (ii) the regular monthly repayment; or

148 (b) in the case of any other credit transaction:

149 (i) the annual percentage rate of the loan;

- 150 (ii) the amount of the regular monthly payment;
- 151 (iii) a statement that the interest rate and monthly payment may increase; and
- 152 (iv) the amount of the maximum monthly payment, based on the maximum interest
- 153 rate allowed.

154 (3) The disclosures required by this section shall be given to the borrower no less than

155 three business days prior to consummation of the transaction.

156 (4) After providing the disclosure required by this section, a lender may not change the

157 terms of the extension of credit if such changes make the disclosures inaccurate, unless new

158 disclosures are provided that meet the requirements of this section.

159 (5) A lender may provide new disclosures pursuant to Subsection (4) by telephone, if:

- 160 (a) the change is initiated by the borrower; and
- 161 (b) at the consummation of the transaction under which the credit is extended:
 - 162 (i) the lender provides to the borrower the new disclosures in writing; and
 - 163 (ii) the lender and borrower certify in writing that the new disclosures were provided
 - 164 by telephone, at least three days prior to the date of consummation of the transaction.

165 Section 6. Section **61-2d-106** is enacted to read:

166 **61-2d-106. Arbitration clauses.**

167 (1) A high-cost mortgage may not be subject to a mandatory arbitration clause that is

168 oppressive, unfair, unconscionable, or substantially in derogation of the rights of borrowers.

169 (2) To be valid, an arbitration clause in a high-cost mortgage contract must comply

170 with the standards set forth in Title 78, Chapter 31a, Utah Uniform Arbitration Act or the

171 Federal Arbitration Act, or any successor acts.

172 Section 7. Section **61-2d-107** is enacted to read:

173 **61-2d-107. Prohibition on single premium credit life insurance.**

174 A borrower credit transaction involving a high-cost mortgage may not include:

175 (1) the offer or sale of any insurance policy, on a single premium basis, that insures,

176 guarantees, or indemnifies the repayment of the outstanding balance of the loan against:

- 177 (a) death;
- 178 (b) illness;
- 179 (c) accident;
- 180 (d) disability; or

- 181 (e) unemployment of the borrower; or
- 182 (2) debt cancellation or a debt suspension agreement.

183 Section 8. Section **61-2d-108** is enacted to read:

184 **61-2d-108. Limitations on refinancing.**

185 (1) A lender may not refinance a high-cost mortgage made by that lender or an affiliate
186 of that lender with another high-cost mortgage during the one-year period beginning on the
187 date of the consummation of the prior high-cost mortgage.

188 (2) A mortgage broker may not arrange for the refinancing of a high-cost mortgage
189 made through the same broker or an affiliate of that broker with another high-cost mortgage
190 during the one-year period beginning on the date of consummation of the prior high-cost
191 mortgage.

192 (3) This section does not apply if the scheduled finance charge for the balance of the
193 prior existing high-cost mortgage exceeds the scheduled finance charge for the subsequent
194 high-cost mortgage by an amount greater than the amount of the fees and charges imposed by
195 the lender for the subsequent mortgage.

196 Section 9. Section **61-2d-109** is enacted to read:

197 **61-2d-109. Copies.**

198 The lender shall provide, at no cost to the borrower, a complete set of all documents
199 pertaining to the transaction, including copies of all executed documents and all documents to
200 be recorded:

- 201 (1) at the time of the closing if done in person; or
- 202 (2) no later than three business days from the closing if done by mail or any other
203 format.

204 Section 10. Section **61-2d-110** is enacted to read:

205 **61-2d-110. Encouraging default prohibited.**

206 (1) A lender may not recommend or encourage default or nonpayment on an existing
207 loan or other debt prior to and in connection with the closing or planned closing of a high-cost
208 mortgage that refinances all or any portion of such existing loan or debt.

209 (2) This section applies to all loans.

210 Section 11. Section **61-2d-111** is enacted to read:

211 **61-2d-111. Mortgage forms.**

212 All lines, figures, forms, and blanks that regulate, govern, control, and authorize a
213 mortgage must be filled in before the documents are signed.

214 Section 12. Section **61-2d-112** is enacted to read:

215 **61-2d-112. Mailing estimates and documents --72-hour requirement.**

216 The lender must provide to the borrower at least 72 hours prior to the closing all good
217 faith estimates and copies of all documents to be signed.

218 Section 13. Section **61-2d-113** is enacted to read:

219 **61-2d-113. Notice of information available to borrowers.**

220 (1) In addition to any other notice or disclosure a lender or title company may provide
221 to a borrower seeking, obtaining, or inquiring about a high-cost mortgage, the lender shall
222 provide the borrower information on financing or educational resources on financing.

223 (2) The requirement set forth in Subsection (1) shall include:

224 (a) the posting, in a public area of the office, notice indicating that educational
225 resources are available;

226 (b) a list of educational opportunities or programs offered in the surrounding area
227 including the program name and phone number;

228 (c) a printed brochure or booklet on responsible lending and borrowing available to the
229 borrower at no charge; or

230 (d) information from the Department of Financial Institutions on its responsible
231 consumer financial educational program.

232 Section 14. Section **70D-1-21** is enacted to read:

233 **70D-1-21. Ordinance or law by political subdivision prohibited.**

234 (1) No county subject to Title 17, and no municipality subject to Title 10, shall enact
235 any ordinance or law that regulates the terms of home loans or that makes the eligibility of any
236 person to do business with the county or municipality dependent upon the terms of home loans
237 originated or serviced by such person.

238 (2) The prohibition in Subsection (1) does not apply to terms of loans funded in whole
239 or in part with money provided or administered by the county or municipality.