

UNSOLICITED LOAN REGULATION

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert M. Muhlestein

AN ACT RELATING TO MORTGAGE FINANCING REGULATION; ESTABLISHING THE UNSOLICITED MORTGAGE LOAN CONSUMER PROTECTION ACT; PROHIBITING SENDING OF NEGOTIABLE DOCUMENTS UNDER CERTAIN CIRCUMSTANCES; ADDRESSING LIABILITY OF PERSONS RECEIVING UNSOLICITED NEGOTIABLE DOCUMENTS; PROHIBITING NEGATIVE CREDIT REPORTS UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING PENALTIES.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

70D-2-101, Utah Code Annotated 1953

70D-2-102, Utah Code Annotated 1953

70D-2-103, Utah Code Annotated 1953

70D-2-104, Utah Code Annotated 1953

70D-2-105, Utah Code Annotated 1953

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

Section 1. Section **70D-2-101** is enacted to read:

CHAPTER 2. UNSOLICITED MORTGAGE LOAN CONSUMER PROTECTION

70D-2-101. Title.

This chapter is known as the "Unsolicited Mortgage Loan Consumer Protection Act."

Section 2. Section **70D-2-102** is enacted to read:

70D-2-102. Definitions.

As used in this section:

(1) "Credit reporting agency" means a person that:

(a) is a credit bureau, consumer reporting agency, association of lending institutions,

1 association of merchants, association of other creditors, firm, partnership, cooperative, or
2 corporation; and

3 (b) for a fee, dues, or on a cooperative nonprofit basis is organized for the purpose of, or
4 regularly engages in, the gathering or evaluation of consumer credit information or other
5 information about consumers for the purpose of reporting to third parties on the credit rating or
6 creditworthiness of any party.

7 (2) "Negotiable instrument" is as defined in 70A-3-104.

8 Section 3. Section **70D-2-103** is enacted to read:

9 **70D-2-103. Solicitation of mortgage loans -- Liability for unsolicited mortgage loan.**

10 (1) A mortgage lender may not extend a mortgage loan by sending to a person a negotiable
11 instrument as part of a solicitation by the mortgage lender for the extension of the mortgage loan,
12 unless prior to receiving the negotiable instrument that person:

13 (a) submits an application for the extension of a mortgage loan; or

14 (b) otherwise requests the extension of a mortgage loan.

15 (2) If a mortgage lender in violation of Subsection (1) sends a negotiable instrument to a
16 person, that person is not liable for the amount of the negotiable instrument unless the mortgage
17 lender proves that the person:

18 (a) received the negotiable instrument;

19 (b) negotiated the negotiable instrument; and

20 (c) at the time the person negotiated the negotiable instrument, knew or should have
21 known that the negotiation created a liability for the amount of the negotiable instrument.

22 Section 4. Section **70D-2-104** is enacted to read:

23 **70D-2-104. Report of liability credit agencies.**

24 If a mortgage lender in violation of Subsection 70D-2-103(1) sends a negotiable instrument
25 to a person, the mortgage lender may not submit a negative credit report related to a negotiable
26 instrument to a credit reporting agency unless the person who received the negotiable instrument
27 is liable under Subsection 70D-2-103(2).

28 Section 5. Section **70D-2-105** is enacted to read:

29 **70D-2-105. Penalties.**

30 (1) A mortgage lender who violates this chapter is liable to the person who received the
31 negotiable instrument for the greater of:

- 1 (a) \$250; or
2 (b) actual damages.
3 (2) In any cause of action filed to determine the liability of a mortgage lender or damages,
4 the prevailing party in the action is entitled to court costs and attorneys' fees.
5 (3) If a mortgage lender willfully violates this section, the court may award punitive
6 damages in an amount not to exceed two times the amount awarded under Subsection (1).

Legislative Review Note
as of 12-29-97 8:44 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel