

Representative Paul Ray proposes the following substitute bill:

MORTGAGE LENDING DISCLOSURES

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Paul Ray

This act amends code provisions dealing with residential mortgage loans. The act prohibits contractors and real estate brokers from offering financial incentives to a borrower to steer the borrower to use a specific lender for a residential mortgage loan. The act requires disclosures to be given in connection with certain mortgage loans, including disclosures related to loan-to-value information, mortgage life and disability insurance, and prepayment penalties. The act makes technical changes.

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

AMENDS:

58-55-501, as last amended by Chapters 198 and 257, Laws of Utah 2001

58-55-503, as last amended by Chapters 198 and 361, Laws of Utah 2001

61-2c-301, as enacted by Chapter 329, Laws of Utah 2000

70D-1-5, as enacted by Chapter 172, Laws of Utah 1990

ENACTS:

61-2-25, Utah Code Annotated 1953

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

Section 1. Section **58-55-501** is amended to read:

58-55-501. Unlawful conduct.

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of



26 these is appropriately licensed or exempted from licensure under this chapter;

27 (2) acting in a construction trade, as an alarm business or company, or as an alarm
28 company agent beyond the scope of the license held;

29 (3) hiring or employing in any manner an unlicensed person, other than an employee for
30 wages who is not required to be licensed under this chapter, to engage in a construction trade for
31 which licensure is required or to act as a contractor or subcontractor in a construction trade
32 requiring licensure;

33 (4) applying for or obtaining a building permit either for oneself or another when not
34 licensed or exempted from licensure as a contractor under this chapter;

35 (5) issuing a building permit to any person for whom there is no evidence of a current
36 license or exemption from licensure as a contractor under this chapter;

37 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other
38 person who is required to be licensed under this chapter but who is not licensed or is otherwise not
39 entitled to obtain or receive the benefit of the building permit;

40 (7) failing to obtain a building permit when required by law or rule;

41 (8) submitting a bid for any work for which a license is required under this chapter by a
42 person not licensed or exempted from licensure as a contractor under this chapter;

43 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with
44 an application to obtain or renew a license under this chapter;

45 (10) allowing one's license to be used by another except as provided by statute or rule;

46 (11) doing business under a name other than the name appearing on the license, except as
47 permitted by statute or rule;

48 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
49 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,
50 or residential electrician, failing to directly supervise an apprentice under one's supervision or
51 exceeding the number of apprentices one is allowed to have under his supervision;

52 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
53 funds in payment for a specific project from an owner or any other person, which funds are to pay
54 for work performed or materials and services furnished for that specific project, and after receiving
55 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and
56 payable to persons who performed work or furnished materials or services within a reasonable

57 period of time;

58 (14) employing as an alarm company an unlicensed individual as an alarm company agent,
59 except as permitted under the exemption from licensure provisions under Section 58-1-307;

60 (15) if licensed as an alarm company or alarm company agent, filing with the division
61 fingerprint cards for an applicant which are not those of the applicant, or are in any other way false
62 or fraudulent and intended to mislead the division in its consideration of the applicant for
63 licensure;

64 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

65 (a) the building or construction laws of this state or any political subdivision;

66 (b) the safety and labor laws applicable to a project;

67 (c) any provision of the health laws applicable to a project;

68 (d) the workers' compensation insurance laws of the state applicable to a project;

69 (e) the laws governing withholdings for employee state and federal income taxes,
70 unemployment taxes, FICA, or other required withholdings; or

71 (f) reporting, notification, and filing laws of this state or the federal government;

72 (17) aiding or abetting any person in evading the provisions of this chapter or rules
73 established under the authority of the division to govern this chapter;

74 (18) engaging in the construction trade or as a contractor for the construction of residences
75 of up to two units when not currently registered or exempt from registration as a qualified
76 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

77 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
78 written contract the notification required in Section 38-11-108; [or]

79 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25[?]; or

80 (21) if licensed as a contractor or representing oneself to be a contractor, giving or offering
81 compensation, as defined in Section 61-2c-102, as an incentive to a borrower to use a specific
82 lender for a residential mortgage loan, as defined in Section 61-2c-102.

83 Section 2. Section **58-55-503** is amended to read:

84 **58-55-503. Penalty for unlawful conduct -- Citations.**

85 (1) Any person who violates Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10),
86 (12), (14), [or] (15), or (21), or who fails to comply with a citation issued under this section after
87 it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of

88 Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance
89 of the work.

90 (2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an
91 infraction unless the violator did so with the intent to deprive the person to whom money is to be
92 paid of the money received, in which case the violator is guilty of theft, as classified in Section
93 76-6-412.

94 (3) Grounds for immediate suspension of the licensee's license by the division and the
95 board include the issuance of a citation for violation of Section 58-55-501 or the failure by a
96 licensee to make application to, report to, or notify the division with respect to any matter for
97 which application, notification, or reporting is required under this chapter or rules adopted under
98 this chapter, including applying to the division for a new license to engage in a new specialty
99 classification or to do business under a new form of organization or business structure, filing with
100 the division current financial statements, notifying the division concerning loss of insurance
101 coverage, or change in qualifier.

102 (4) (a) If upon inspection or investigation, the division concludes that a person has violated
103 the provisions of [~~Subsections~~] Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or
104 (21), or any rule or order issued with respect to these subsections, and that disciplinary action is
105 appropriate, the director or his designee from within the division for each alternative respectively,
106 shall, promptly issue a citation to the person according to this chapter and any pertinent rules,
107 attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
108 proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

109 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3),
110 (9), (10), (12), (14), [~~or~~] (19), or (21), as evidenced by an uncontested citation, a stipulated
111 settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine
112 pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist
113 from violating Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (21).

114 (ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401
115 may not be assessed through a citation.

116 (b) Each citation shall be in writing and describe with particularity the nature of the
117 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
118 violated. The citation shall clearly state that the recipient must notify the division in writing within

119 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
120 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
121 explain the consequences of failure to timely contest the citation or to make payment of any fines
122 assessed by the citation within the time specified in the citation.

123 (c) Each citation issued under this section, or a copy of each citation, may be served upon
124 any person upon whom a summons may be served in accordance with the Utah Rules of Civil
125 Procedure and may be made personally or upon his agent by a division investigator or by any
126 person specially designated by the director or by mail.

127 (d) If within 20 calendar days from the service of a citation, the person to whom the
128 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
129 order of the division and is not subject to further agency review. The period to contest a citation
130 may be extended by the division for cause.

131 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the
132 license of a licensee who fails to comply with a citation after it becomes final.

133 (f) The failure of an applicant for licensure to comply with a citation after it becomes final
134 is a ground for denial of license.

135 (g) No citation may be issued under this section after the expiration of six months
136 following the occurrence of any violation.

137 (h) Fines shall be assessed by the director or his designee according to the following:

- 138 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
139 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and
140 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
141 \$2,000 for each day of continued offense.

142 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
143 Subsection (4)(i), an offense constitutes a second or subsequent offense if:

144 (A) the division previously issued a final order determining that a person committed a first
145 or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), ~~(19)~~,
146 or (21); or

147 (B) (I) the division initiated an action for a first or second offense;

148 (II) no final order has been issued by the division in the action initiated under Subsection
149 (4) (i)(i)(B)(I);

150 (III) the division determines during an investigation that occurred after the initiation of the
151 action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent violation
152 of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (21); and

153 (IV) after determining that the person committed a second or subsequent offense under
154 Subsection (4) (i)(i)(B)(III), the division issues a final order on the action initiated under
155 Subsection (4) (i)(i)(B)(I).

156 (ii) In issuing a final order for a second or subsequent offense under Subsection (4) (i)(i),
157 the division shall comply with the requirements of this section.

158 (5) Any penalty imposed by the director under Subsection (4) (h) shall be deposited into
159 the Commerce Service Fund. Any penalty which is not paid may be collected by the director by
160 either referring the matter to a collection agency or bringing an action in the district court of the
161 county in which the person against whom the penalty is imposed resides or in the county where
162 the office of the director is located. Any county attorney or the attorney general of the state is to
163 provide legal assistance and advice to the director in any action to collect the penalty. In any
164 action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall
165 be awarded.

166 Section 3. Section **61-2-25** is enacted to read:

167 **61-2-25. Unlawful financial incentive.**

168 It is unlawful for a real estate broker to give or offer compensation, as defined in Section
169 61-2c-102, as an incentive to a borrower to use a specific lender for a residential mortgage loan,
170 as defined in Section 61-2c-102.

171 Section 4. Section **61-2c-301** is amended to read:

172 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

173 (1) A person transacting the business of residential mortgage loans in this state may not:

174 (a) give or receive compensation [~~or anything of value~~], as defined in Section 61-2c-102,
175 in exchange for a referral of residential mortgage loan business unless the compensation [~~or thing~~
176 ~~of value~~] is de minimis as defined by the division;

177 (b) charge a fee in connection with a residential mortgage loan transaction:

178 (i) that is excessive; or

179 (ii) if the person does not comply with Section 70D-1-6;

180 (c) give or receive compensation [~~or anything of value~~], as defined in Section 61-2c-102,

181 in exchange for a referral of settlement or loan closing services related to a residential mortgage
182 loan transaction;

183 (d) make a false statement or representation for purposes of inducing a lender to extend
184 credit as part of a residential mortgage loan transaction;

185 (e) give or receive compensation [~~or anything of value~~], as defined in Section 61-2c-102,
186 to influence the independent judgment of an appraiser in reaching a value conclusion in a
187 residential mortgage loan transaction;

188 (f) violate or not comply with:

189 (i) this chapter;

190 (ii) an order of the commission or division; or

191 (iii) a rule made by the division;

192 (g) fail to respond within the required time period to:

193 (i) a notice or complaint of the division; or

194 (ii) a request for information from the division;

195 (h) make false representations to the division, including in a registration statement;

196 (i) engage in unprofessional conduct as defined by rule; or

197 (j) engage in an act or omission in transacting the business of residential mortgage loans
198 that constitutes dishonesty, fraud, or misrepresentation.

199 (2) A person violates this chapter if, for a criminal offense involving moral turpitude,
200 whether or not the crime is related to the business of residential mortgage loans, that person while
201 registered under this chapter:

202 (a) is convicted;

203 (b) pleads guilty or nolo contendere;

204 (c) enters a plea in abeyance; or

205 (d) is subjected to a criminal disposition similar to the ones described in Subsections (2)(a)
206 through (c).

207 Section 5. Section **70D-1-5** is amended to read:

208 **70D-1-5. Notice required with loan application.**

209 (1) Every mortgage lender and mortgage loan broker shall give, to each person from whom
210 it receives or for whom it prepares a written application for a mortgage loan[-];

211 (a) a written notice disclosing, if such is the case, that the mortgage loan applied for may

212 be sold or assigned, or the servicing of the loan may be sold or assigned, and that the mortgage
213 loan will not necessarily be held or serviced by the lender which originates it[~~-. The written notice~~];

214 (b) a written notice disclosing, if such is the case, that the mortgage loan applied for will
215 result in total indebtedness secured by mortgages against the applicant's residence exceeding the
216 fair market value of the residence and informing the applicant that this loan-to-value circumstance:

217 (i) may adversely affect the ability of the applicant in the future to refinance or sell the
218 residence; and

219 (ii) may have adverse consequences on the deductibility of interest paid on the mortgage
220 loan by the applicant for income tax purposes;

221 (c) a written notice disclosing:

222 (i) that the applicant is not required to purchase mortgage life or disability insurance in
223 connection with the mortgage loan; and

224 (ii) the applicant's right to receive a refund of amounts paid by the applicant in certain
225 circumstances under applicable law; and

226 (d) a written notice disclosing, if such is the case, that a prepayment penalty or fee may be
227 owed in connection with the mortgage loan, including:

228 (i) details of when the prepayment penalty or fee may be owed and a description of how
229 it will be calculated; and

230 (ii) an illustration of how the prepayment penalty or fee would be calculated on a \$100,000
231 principal payoff.

232 (2) Subsection (1)(d) does not apply to a federally insured mortgage loan or to a mortgage
233 loan by the Utah Housing Corporation.

234 (3) The written notices required by this section shall be provided at the time of receipt or
235 preparation of the application.