

**Representative Wayne A. Harper** proposes the following substitute bill:

**LENDING LAW AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Wayne A. Harper**

**This act modifies the Check Cashing Registration act to provide guidelines for deferred deposit loans extended through the Internet, require additional disclosures, and require the consideration of a borrower's repayment ability when making a deferred deposit loan. The act modifies the Financial Institutions Code to enact the Title Lending Registration Act, imposing registration requirements, operational and disclosure requirements, and enforcement provisions for title loans. The act modifies the Utah Residential Mortgage Practices Act by imposing operational restrictions on high-cost dwelling loans, requiring disclosures and imposing operational restrictions on prepayment penalties, lending without consideration of the borrower's repayment ability, negative amortization, payments to home improvement contracts, loan refinancing, acceleration, the amount of loans, and incomplete contracts. The act provides methods for borrowers and lenders to remedy a breach. The act makes technical changes.**

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

AMENDS:

**7-23-103**, as enacted by Chapter 144, Laws of Utah 1999

**7-23-105**, as enacted by Chapter 144, Laws of Utah 1999

ENACTS:

**7-24-101**, Utah Code Annotated 1953

**7-24-102**, Utah Code Annotated 1953

**7-24-201**, Utah Code Annotated 1953

**7-24-202**, Utah Code Annotated 1953



- 26            **7-24-203**, Utah Code Annotated 1953
- 27            **7-24-204**, Utah Code Annotated 1953
- 28            **7-24-301**, Utah Code Annotated 1953
- 29            **7-24-302**, Utah Code Annotated 1953
- 30            **7-24-303**, Utah Code Annotated 1953
- 31            **7-24-304**, Utah Code Annotated 1953
- 32            **7-24-305**, Utah Code Annotated 1953
- 33            **61-2c-501**, Utah Code Annotated 1953
- 34            **61-2c-502**, Utah Code Annotated 1953
- 35            **61-2c-503**, Utah Code Annotated 1953
- 36            **61-2c-504**, Utah Code Annotated 1953
- 37            **61-2c-505**, Utah Code Annotated 1953
- 38            **61-2c-506**, Utah Code Annotated 1953
- 39            **61-2c-507**, Utah Code Annotated 1953
- 40            **61-2c-508**, Utah Code Annotated 1953
- 41            **61-2c-509**, Utah Code Annotated 1953
- 42            **61-2c-510**, Utah Code Annotated 1953
- 43            **61-2c-511**, Utah Code Annotated 1953
- 44            **61-2c-512**, Utah Code Annotated 1953
- 45            **61-2c-513**, Utah Code Annotated 1953

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

47            Section 1. Section **7-23-103** is amended to read:

48            **7-23-103. Registration -- Rulemaking.**

49            (1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or  
50 with a Utah resident unless the person:

51            (i) registers with the department in accordance with this chapter; and

52            (ii) maintains a valid registration.

53            (b) It is unlawful for a person to operate a mobile facility in this state to engage in the  
54 business of a check casher.

55            (c) Notwithstanding Subsection (1)(a), a person that is engaged in the business of a  
56 check casher in this state on May 3, 1999, is not required to be registered under this section

57 until July 1, 1999.

58 (2) (a) A registration and a renewal of a registration expires on [~~January 31~~] April 30 of  
59 each year unless on or before that date the person renews the registration.

60 (b) To register under this section, a person shall:

61 (i) pay an original registration fee established under Subsection 7-1-401(8); and

62 (ii) submit a registration statement containing the information described in Subsection

63 (2)(d).

64 (c) To renew a registration under this section, a person shall:

65 (i) pay the annual fee established under Subsection 7-1-401(5); and

66 (ii) submit a renewal statement containing the information described in Subsection

67 (2)(d).

68 (d) A registration or renewal statement shall state:

69 (i) the name of the person;

70 (ii) the name in which the business will be transacted if different from that required in

71 Subsection (2)(d)(i);

72 (iii) the address of the person's principal business office, which may be outside this

73 state;

74 (iv) the addresses of all offices in this state at which the person conducts the business

75 of a check casher;

76 (v) if the person conducts the business of a check casher in this state but does not

77 maintain an office in this state, a brief description of the manner in which the business is

78 conducted;

79 (vi) the name and address in this state of a designated agent upon whom service of

80 process may be made;

81 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any

82 crime involving moral turpitude with respect to that person or any officer, director, manager,

83 operator, or principal of that person; and

84 (viii) any other information required by the rules of the department.

85 (3) If the information in a registration or renewal statement required under Subsection

86 (2) becomes inaccurate after filing, a person is not required to notify the department until:

87 (a) that person is required to renew the registration; or

88 (b) the department specifically requests earlier notification.

89 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
90 department may make rules consistent with this section providing for the form, content, and  
91 filing of a registration and renewal statement.

92 Section 2. Section **7-23-105** is amended to read:

93 **7-23-105. Operational requirements for deferred deposit loans.**

94 (1) If a check casher extends a deferred deposit loan, the check casher shall:

95 (a) post in a conspicuous location on its premises that can be viewed by a person  
96 seeking a deferred deposit loan:

97 (i) a complete schedule of any interest or fees charged for a deferred deposit loan that  
98 states the interest and fees [~~using dollar amounts; and~~]:

99 (A) as dollar amounts; and

100 (B) as annual percentage rates; and

101 (ii) a telephone number [~~the~~] a person [~~can~~] may call to make a complaint to the  
102 department regarding [~~the~~] a deferred deposit loan[;].

103 (b) enter into a written contract for the deferred deposit loan[;] containing:

104 (i) the name of the person receiving the deferred deposit loan;

105 (ii) the transaction date;

106 (iii) the amount of the check;

107 (iv) a statement of the total amount of any interest or fees that may be charged for the  
108 deferred deposit loan, expressed as:

109 (A) a dollar amount; and

110 (B) an annual percentage rate; and

111 (v) a date, not more than 12 weeks after the loan transaction date, upon which the  
112 check casher may deposit or negotiate the check;

113 (c) provide the person seeking the deferred deposit loan a copy of the [~~deferred deposit~~  
114 ~~contract~~] written contract described in Subsection (1)(b);

115 (d) prior to the execution of the deferred deposit loan, orally review with the person  
116 seeking the deferred deposit loan the terms of the deferred deposit loan including:

117 (i) the amount of any interest rate or fee[; and], expressed as:

118 (A) a dollar amount; and

119           (B) an annual percentage rate; and  
 120           (ii) the date on which the full amount of the deferred deposit loan is due; and  
 121           (e) comply with:  
 122           (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;

123           (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and  
 124           (iii) Title 70C, Utah Consumer Credit Code.

125           (2) If a check casher extends a deferred deposit loan through the Internet or other  
 126 electronic means, the check casher shall:

127           (a) provide the information described in Subsection (1)(a) to the person receiving the  
 128 deferred deposit loan in a conspicuous manner prior to the completion of the deferred deposit  
 129 loan; and

130           (b) in connection with the disclosure required under Subsection (2)(a), provide a list of  
 131 states where the check casher is registered or authorized to offer deferred deposit loans through  
 132 the Internet or other electronic means.

133           ~~(2)~~ (3) A check casher that engages in a deferred deposit loan may not:

134           (a) collect interest on a deferred deposit loan with an outstanding principal balance 12  
 135 weeks after the day on which the deferred deposit loan is executed;

136           (b) rollover a deferred deposit loan if the rollover requires a person to pay the amount  
 137 owed by the person under [a] the deferred deposit loan in whole or in part more than 12 weeks  
 138 from the day on which the deferred deposit loan is first executed[-]; or

139           (c) extend a deferred deposit loan without regard to the ability of the person seeking the  
 140 deferred deposit loan to repay the deferred deposit loan, including the person's:

141           (i) current and expected income;

142           (ii) current obligations; and

143           (iii) employment.

144           Section 3. Section **7-24-101** is enacted to read:

145                           **CHAPTER 24. TITLE LENDING REGISTRATION ACT**

146   **Part 1. General Provisions**

147           **7-24-101. Title.**

148           This chapter is known as the "Title Lending Registration Act."

149           Section 4. Section **7-24-102** is enacted to read:

150 **7-24-102. Definitions.**

151 As used in this chapter:

152 (1) "Rollover" means the extension or renewal of the term of a title loan.

153 (2) "Title lender" means a person that extends a title loan.

154 (3) (a) "Title loan" means a loan secured by the title to a:

155 (i) motor vehicle, as defined in Section 41-6-1;

156 (ii) mobile home, as defined in Section 41-6-1; or

157 (iii) motorboat, as defined in Section 73-18-2.

158 (b) "Title loan" does not include:

159 (i) a purchase money loan;

160 (ii) a loan made in connection with the sale of a:

161 (A) motor vehicle, as defined in Section 41-6-1;

162 (B) mobile home, as defined in Section 41-6-1; or

163 (C) motorboat, as defined in Section 73-18-2; or

164 (iii) a loan extended by an institution listed in Section 7-24-305.

165 Section 5. Section **7-24-201** is enacted to read:

166 **Part 2. Requirements**

167 **7-24-201. Registration -- Rulemaking.**

168 (1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident  
169 unless the person:

170 (i) registers with the department in accordance with this chapter; and

171 (ii) maintains a valid registration.

172 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title  
173 loan.

174 (2) (a) A registration and a renewal of a registration expires on April 30 of each year  
175 unless on or before that date the person renews the registration.

176 (b) To register under this section, a person shall:

177 (i) pay an original registration fee established under Subsection 7-1-401(8); and

178 (ii) submit a registration statement containing the information described in Subsection

179 (2)(d).

180 (c) To renew a registration under this section, a person shall:

181 (i) pay the annual fee established under Subsection 7-1-401(5); and  
182 (ii) submit a renewal statement containing the information described in Subsection  
183 (2)(d).  
184 (d) A registration or renewal statement shall state:  
185 (i) the name of the person;  
186 (ii) the name in which the business will be transacted if different from that required in  
187 Subsection (2)(d)(i);  
188 (iii) the address of the person's principal business office, which may be outside this  
189 state;  
190 (iv) the addresses of all offices in this state at which the person extends title loans;  
191 (v) if the person extends title loans in this state but does not maintain an office in this  
192 state, a brief description of the manner in which the business is conducted;  
193 (vi) the name and address in this state of a designated agent upon whom service of  
194 process may be made;  
195 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any  
196 crime involving moral turpitude with respect to that person or any officer, director, manager,  
197 operator, or principal of that person; and  
198 (viii) any other information required by the rules of the department.  
199 (3) If the information in a registration or renewal statement required under Subsection  
200 (2) becomes inaccurate after filing, a person is not required to notify the department until:  
201 (a) that person is required to renew the registration; or  
202 (b) the department specifically requests earlier notification.  
203 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
204 department may make rules consistent with this section providing for the form, content, and  
205 filing of a registration and renewal statement.  
206 Section 6. Section **7-24-202** is enacted to read:  
207 **7-24-202. Operational requirements for title loans.**  
208 (1) A title lender shall:  
209 (a) post in a conspicuous location on its premises that can be viewed by a person  
210 seeking a title loan:  
211 (i) a complete schedule of any interest or fees charged for a title loan that states the

212 interest and fees:  
213        (A) as dollar amounts; and  
214        (B) as annual percentage rates; and  
215        (ii) a telephone number a person may call to make a complaint to the department  
216 regarding a title loan;  
217        (b) enter into a written contract for the title loan containing:  
218        (i) the name of the person receiving the title loan;  
219        (ii) the transaction date;  
220        (iii) the amount of the title loan; and  
221        (iv) a statement of the total amount of any interest or fees that may be charged for the  
222 title loan, expressed as:  
223        (A) a dollar amount; and  
224        (B) an annual percentage rate;  
225        (c) provide the person seeking the title loan a copy of the written contract described in  
226 Subsection (1)(b);  
227        (d) prior to the execution of the title loan;  
228        (i) orally review with the person seeking the title loan the terms of the title loan  
229 including:  
230        (A) the amount of any interest rate or fee, expressed as:  
231        (I) a dollar amount; and  
232        (II) an annual percentage rate; and  
233        (B) the date on which the full amount of the title loan is due; and  
234        (ii) provide the person seeking the title loan a copy of the disclosure form adopted by  
235 the department under Section 7-24-203; and  
236        (e) comply with:  
237        (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et. seq.;  
238        (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and  
239        (iii) Title 70C, Utah Consumer Credit Code.  
240        (2) If a title lender extends a title loan through the Internet or other electronic means,  
241 the title lender shall:  
242        (a) provide the information described in Subsection (1)(a) to the person receiving the

243 title loan in a conspicuous manner prior to the completion of the title loan; and

244 (b) in connection with the disclosure required under Subsection (2)(a), provide a list of  
245 states where the title lender is registered or authorized to offer title loans through the Internet or  
246 other electronic means.

247 (3) A title lender may not:

248 (a) rollover a title loan unless the person receiving the title loan:

249 (i) requests a rollover of the title loan; and

250 (ii) pays a fee in connection with the request to rollover the title loan;

251 (b) extend a title loan to a person if the total amount of all title loans extended by the  
252 title lender to that person exceeds the fair market value of the property securing the title loans;

253 or

254 (c) extend a title loan without regard to the ability of the person seeking the title loan to  
255 repay the title loan, including the person's:

256 (i) current and expected income;

257 (ii) current obligations; and

258 (iii) employment.

259 Section 7. Section **7-24-203** is enacted to read:

260 **7-24-203. Disclosure form for title loans.**

261 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
262 department shall adopt a disclosure form for title loans that complies with this section.

263 (2) The department shall specify by rule:

264 (a) the information to be provided in the disclosure form including:

265 (i) the consequences of obtaining a title loan;

266 (ii) the consequences of defaulting on a title loan;

267 (iii) generally available alternatives to a title loan; and

268 (iv) methods of obtaining credit counseling or other financial advice;

269 (b) the type size of the disclosure form; and

270 (c) the manner in which a title lender shall conspicuously provide the disclosure form  
271 to a person seeking a title loan.

272 Section 8. Section **7-24-204** is enacted to read:

273 **7-24-204. Remedy for default.**

274 If a person defaults on a title loan, the sole remedy for the title lender shall be to follow  
275 the provisions of Title 70A, Chapter 9a, Part 6, Default.

276 Section 9. Section **7-24-301** is enacted to read:

277 **Part 3. Enforcement**

278 **7-24-301. Enforcement by department -- Rulemaking.**

279 Subject to the requirements of Title 63, Chapter 46b, Administrative Procedures Act,  
280 the department may:

281 (1) (a) receive and act on complaints;

282 (b) take action designed to obtain voluntary compliance with this chapter; or

283 (c) commence administrative or judicial proceedings on its own initiative to enforce  
284 compliance with this chapter;

285 (2) counsel persons and groups on their rights and duties under this chapter;

286 (3) make rules to:

287 (a) restrict or prohibit lending or servicing practices that are misleading, unfair, or  
288 abusive;

289 (b) promote or assure fair and full disclosure of the terms and conditions of agreements  
290 and communications between title lenders and customers; or

291 (c) promote or assure uniform application of or to resolve ambiguities in applicable  
292 state or federal laws or federal regulations; and

293 (4) employ hearing examiners, clerks, and other employees and agents as necessary to  
294 perform the department's duties under this chapter.

295 Section 10. Section **7-24-302** is enacted to read:

296 **7-24-302. Examination of books, accounts, and records by the department.**

297 (1) The department may examine the books, accounts, and records of a title lender and  
298 may make investigations to determine compliance with this chapter.

299 (2) In accordance with Section 7-1-401, a title lender shall pay a fee for an examination  
300 conducted under Subsection (1).

301 Section 11. Section **7-24-303** is enacted to read:

302 **7-24-303. Penalties.**

303 (1) A person who violates this chapter or who files materially false information with a  
304 registration or renewal under Section 7-24-201 is:

- 305 (a) guilty of a class B misdemeanor; and
- 306 (b) subject to revocation of a person's registration under this chapter.
- 307 (2) Subject to Title 63, Chapter 46b, Administrative Procedures Act, if the department
- 308 determines that a person is extending title loans in violation of this chapter, the department
- 309 may:
  - 310 (a) revoke that person's registration under this chapter;
  - 311 (b) issue a cease and desist order from committing any further violations; or
  - 312 (c) prohibit the person from continuing to extend title loans.

313 Section 12. Section **7-24-304** is enacted to read:

314 **7-24-304. Civil liability.**

315 Nothing in this chapter is intended to limit any civil liability that may exist against a

316 title lender for:

- 317 (1) breach of contract;
- 318 (2) violation of federal law; or
- 319 (3) other unlawful act.

320 Section 13. Section **7-24-305** is enacted to read:

321 **7-24-305. Exemptions.**

322 The following are not subject to the requirements of this chapter:

- 323 (1) a depository institution;
- 324 (2) a depository institution holding company; or
- 325 (3) an institution directly or indirectly owned or controlled by one or more:
  - 326 (a) depository institutions; or
  - 327 (b) depository institution holding companies.

328 Section 14. Section **61-2c-501** is enacted to read:

329 **Part 5. High-Cost Dwelling Loans**

330 **61-2c-501. Definitions.**

331 As used in this part:

- 332 (1) "Accelerate" means a demand for immediate repayment of the entire balance of a
- 333 residential mortgage loan.
- 334 (2) "Borrower" means a person that:
  - 335 (a) seeks a high-cost dwelling loan; or

336 (b) is obligated under a high-cost dwelling loan.

337 (3) "High-cost dwelling loan" means a residential mortgage loan with a closing date on  
338 or after May 5, 2003 under which:

339 (a) the annual percentage rate at the closing of the residential mortgage loan exceeds by  
340 more than eight percentage points the yield on treasury securities having comparable periods of  
341 maturity on the 15 day of the month immediately preceding the month in which the application  
342 for the residential mortgage loan is received by the lender; or

343 (b) the total points and fees payable by the borrower at or before closing of the  
344 residential mortgage loan exceeds 6% of the total loan amount.

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

346 (a) offers a high-cost dwelling loan;

347 (b) extends a high-cost dwelling loan; or

348 (c) acts as a mortgage loan servicer with respect to a high-cost dwelling loan.

349 Section 15. Section **61-2c-502** is enacted to read:

350 **61-2c-502. Disclosure statement.**

351 (1) A lender may not originate a high-cost dwelling loan unless the lender provides to  
352 the borrower a disclosure form no later than three business days prior to the day of the signing  
353 of the high-cost dwelling loan documents. The disclosure form shall be adopted by the  
354 division as provided in Subsection (2).

355 (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
356 the division shall adopt a disclosure form for high-cost dwelling loans that complies with this  
357 Subsection (2).

358 (b) The division shall specify by rule:

359 (i) the information to be provided in the disclosure form including:

360 (A) generally available alternatives to a high-cost dwelling loan;

361 (B) the consequences of obtaining a high-cost dwelling loan;

362 (C) the consequences of defaulting on a high-cost dwelling loan;

363 (D) the consequences of consolidating consumer debt into a high-cost dwelling loan;

364 (E) the responsibility for property taxes and homeowner's insurance;

365 (F) factors that may influence a person's credit rating;

366 (G) factors that may influence:

- 367           (I) interest rates;  
368           (II) closing costs; or  
369           (III) other fees;  
370           (H) methods of obtaining credit counseling or other financial advice:  
371           (I) the responsibility for:  
372           (I) property taxes; and  
373           (II) homeowner's insurance; and  
374           (J) that signing a loan application does not obligate a consumer to complete a loan  
375 agreement;  
376           (ii) the type size of the disclosure form; and  
377           (iii) the manner in which a lender shall conspicuously provide the disclosure form to a  
378 borrower.  
379           (4) There is a rebuttable presumption that a lender has provided the disclosures  
380 required under this section if the borrower provides the lender with a signed acknowledgment  
381 that the borrower received a copy of the disclosure form required under Subsection.  
382           Section 16. Section **61-2c-503** is enacted to read:  
383           **61-2c-503. Prepayment fees and penalties.**  
384           (1) A high-cost dwelling loan may not include a prepayment fee or penalty on or after  
385 the first 24 months after the day of the closing of the high-cost dwelling loan.  
386           (2) A high-cost dwelling loan may include a prepayment fee or penalty up to the first  
387 24 months after the day of the closing of the high-cost home loan only if:  
388           (a) the prepayment fee or penalty is not more than:  
389           (i) 2% of the total amount of the high-cost dwelling loan in the first 12 months after the  
390 day of the closing of the high-cost dwelling loan; and  
391           (ii) 1% of the total amount of the high-cost dwelling loan in the second 12 months after  
392 the day of the closing of the high-cost dwelling loan;  
393           (b) the lender offers the borrower a choice of a loan without a prepayment fee or  
394 penalty;  
395           (c) the lender discloses in writing to the borrower at least three business days prior to  
396 the day of the closing of the loan:  
397           (i) the terms of the prepayment fee or penalty to the borrower for accepting the

398 high-cost dwelling loan with the prepayment penalty; and

399 (ii) the rates, points, and fees that would be available to the borrower for accepting a  
400 loan without a prepayment penalty;

401 (d) the prepayment fee or penalty does not apply if the high-cost dwelling loan is  
402 accelerated as a result of default; and

403 (e) the lender does not finance a prepayment fee or penalty through a new loan  
404 originated by the same lender or an affiliate of that lender.

405 Section 17. Section **61-2c-504** is enacted to read:

406 **61-2c-504. Negative amortization.**

407 (1) Except as provided in Subsection (2), a high-cost dwelling loan may not include  
408 terms under which the outstanding principal balance will increase at any time over the course  
409 of the high-cost dwelling loan because the payments do not cover the full amount of the  
410 interest.

411 (2) Notwithstanding Subsection (1), this section does not prohibit a reverse mortgage  
412 loan secured by real property if the reverse mortgage loan:

413 (a) provides cash advances to a borrower based on the equity or value in a borrower's  
414 owner-occupied principal residence; and

415 (b) requires no payment of principal or interest until the entire loan becomes due and  
416 payable.

417 Section 18. Section **61-2c-505** is enacted to read:

418 **61-2c-505. Consideration of the borrower's repayment ability.**

419 A lender may not originate a high-cost dwelling loan to a borrower based on the  
420 borrower's collateral without regard to the borrower's ability to repay the high-cost dwelling  
421 loan, including the borrower's:

422 (1) current and expected income;

423 (2) current obligations;

424 (3) employment; and

425 (4) credit score, as defined in Section 31A-22-320.

426 Section 19. Section **61-2c-506** is enacted to read:

427 **61-2c-506. Payments under home-improvement contracts.**

428 (1) A lender may not pay a contractor under a home-improvement contract from the

429 proceeds of a high-cost dwelling loan other than:

430 (a) by an instrument payable to:

431 (i) the borrower; or

432 (ii) jointly to:

433 (A) the borrower; and

434 (B) the contractor; or

435 (b) at the election of the borrower, to a third-party escrow agent under a written escrow  
436 agreement signed, prior to the disbursement of funds, by the:

437 (i) borrower;

438 (ii) lender; and

439 (iii) contractor.

440 (2) (a) A lender may not make a payment described in Subsection (1) unless the  
441 borrower presents to the lender a signed and dated completion certificate showing that the  
442 home-improvement contract was completed to the satisfaction of the borrower.

443 (b) Subsection (2)(a) does not apply to progress payments for home-improvement work  
444 that the borrower certifies is completed.

445 Section 20. Section **61-2c-507** is enacted to read:

446 **61-2c-507. Loan refinancing.**

447 (1) A lender may not originate a high-cost dwelling loan to a borrower that refinances  
448 an existing residential mortgage loan that was closed less than five years prior to the day of the  
449 closing of the high-cost dwelling loan unless the high-cost dwelling loan provides a reasonable,  
450 tangible, net benefit to the borrower considering all the circumstances, including:

451 (a) the terms of both the new and refinanced loans;

452 (b) the cost of the new high-cost dwelling loan; and

453 (c) the borrower's circumstances.

454 (2) There is a rebuttable presumption that a high-cost dwelling loan provides a  
455 reasonable, tangible, net benefit to a borrower if the borrower provides the lender with a signed  
456 acknowledgment that the borrower receives a benefit from the high-cost dwelling loan.

457 Section 21. Section **61-2c-508** is enacted to read:

458 **61-2c-508. Acceleration.**

459 (1) A high-cost dwelling loan may not contain nor may a person enforce a provision in

460 a high-cost dwelling loan that permits the lender, in the lender's sole discretion, to accelerate  
461 the indebtedness.

462 (2) Subsection (1) does not apply if:

463 (a) acceleration of repayment of the loan is justified by:

464 (i) a default in which the borrower fails to meet the repayment terms of the agreement  
465 for any outstanding balance on the high-cost dwelling loan; or

466 (ii) a due-on-sale provision in the high-cost dwelling loan;

467 (b) there is fraud or material misrepresentation by a borrower in connection with the  
468 high-cost dwelling loan;

469 (c) there is a provision in the high-cost dwelling loan permitting acceleration if the  
470 lender, in good faith, believes that:

471 (i) the lender is materially insecure; or

472 (ii) the prospect of future payment has become materially impaired; or

473 (d) there is any action or inaction by the borrower that adversely affects:

474 (i) the lender's security for the high-cost dwelling loan; or

475 (ii) any rights of the lender in the lender's security for the high-cost dwelling loan.

476 (3) (a) If a lender asserts that grounds for acceleration of a high-cost dwelling loan  
477 exist and requires the payment in full of all sums secured by the security instrument, the

478 borrower or anyone authorized to act on the borrower's behalf may, at any time until title is  
479 transferred, cure the default and reinstate the high-cost dwelling loan by tendering the total

480 amount in arrears of the following:

481 (i) principal;

482 (ii) interest;

483 (iii) late fees;

484 (iv) any fees contained in the high-cost dwelling loan debt instrument; and

485 (v) escrow deposits.

486 (b) Cure of a default on a high-cost dwelling loan as provided in this section:

487 (i) reinstates the borrower to the same position as if the default had not occurred; and

488 (ii) nullifies as of the day of the cure any acceleration of the high-cost dwelling loan.

489 (4) A lender may not require a borrower to pay any of the following to cure a default  
490 on a high-cost dwelling loan:

491 (a) a charge, fee, or penalty attributable to the exercise of the right to cure a default;  
492 (b) any attorney fees incurred by the lender in excess of reasonable attorney fees usual  
493 and customary for the acceleration of a mortgage loan.

494 (5) (a) If a default on a high-cost dwelling loan is cured prior to the initiation of any  
495 action to foreclose, seize, or transfer a dwelling, the lender may not initiate the foreclosure  
496 proceeding or other action for that default.

497 (b) If a default on a high-cost dwelling loan is cured after the initiation of any action to  
498 foreclose, seize, or transfer a dwelling, the lender shall terminate the foreclosure proceeding or  
499 other action.

500 (6) At least 30 days before any action under a high-cost dwelling loan is filed to  
501 foreclose, seize, or transfer ownership of a dwelling, the lender shall deliver to the borrower a  
502 notice of the right to cure the default informing the borrower of:

503 (a) the nature of the default claimed on the high-cost dwelling loan;

504 (b) the borrower's right to cure the default by paying the sum of money required to cure  
505 the default;

506 (c) if the amount necessary to cure the default will change during the 30-day period  
507 after the effective date of the notice, the name and telephone number of a person the borrower  
508 may call to obtain the amount necessary to cure the default;

509 (d) the date by which the borrower may cure the default to avoid acceleration and  
510 initiation of foreclosure or other action to seize the dwelling which date shall not be less than  
511 30 days after the date the notice is delivered under this Subsection (6);

512 (e) the name, address, and telephone number of a person to whom the payment or  
513 tender shall be made;

514 (f) that if the borrower does not cure the default by the date specified, the lender may  
515 take steps to terminate the borrower's ownership in the property by commencing a foreclosure  
516 proceeding or other action to seize the dwelling; and

517 (g) the name and address of the lender and the telephone number of a representative of  
518 the lender whom the borrower may contact if the borrower disagrees with:

519 (i) the assertion that a default has occurred; or

520 (ii) the correctness of the calculation of the amount required to cure the default.

521 Section 22. Section **61-2c-509** is enacted to read:

522 **61-2c-509. Limit on loan amount.**

523 (1) A high-cost dwelling loan may not contain a principal amount that, when added to  
524 the aggregate total of the outstanding principal balances of all other primary or subordinate  
525 loans secured by the same property, exceeds the fair market value of the property on the day of  
526 the closing of the high-cost dwelling loan.

527 (2) For purposes of Subsection (1), a person originating a high-cost dwelling loan may  
528 rely on:

529 (a) a written appraisal of the property prepared in compliance with Section 61-2b-27 by  
530 an independent third-party appraiser licensed under Title 61, Chapter 2b, Real Estate Appraiser  
531 Licensing and Certification;

532 (b) a comparative market analysis of three or more similar properties; or

533 (c) the most recent property tax assessment of the property.

534 Section 23. Section **61-2c-510** is enacted to read:

535 **61-2c-510. Blanks in loan documents.**

536 A lender may not use a document evidencing or securing a high-cost dwelling loan if  
537 the document contains one or more blanks to be filled in after the closing of the high-cost  
538 dwelling loan.

539 Section 24. Section **61-2c-511** is enacted to read:

540 **61-2c-511. Advertising disclosures.**

541 A person advertising that refinancing a preexisting debt with a high-cost dwelling loan  
542 will reduce a borrower's aggregate monthly debt payment shall conspicuously disclose in the  
543 advertisement that the high-cost dwelling loan may increase:

544 (1) the borrower's aggregate number of monthly debt payments; and

545 (2) the aggregate amount paid by the borrower over the term of the high-cost dwelling  
546 loan.

547 Section 25. Section **61-2c-512** is enacted to read:

548 **61-2c-512. Remedy for lender violation.**

549 A lender is not liable civilly or administratively for violations of this part if the lender  
550 establishes that the violation meets the following criteria:

551 (1) the violation was not willful or intentional, including violations resulting from the  
552 following:

- 553           (a) clerical error;
- 554           (b) calculation error;
- 555           (c) computer malfunction;
- 556           (d) computer programming error; and
- 557           (e) printing error;
- 558           (2) the violation occurred notwithstanding the maintenance of procedures reasonably
- 559 adopted to avoid errors; and

560           (3) the violation is corrected within 45 days after:

- 561           (a) receipt of a complaint from:
- 562           (i) a borrower; or
- 563           (ii) the division; or
- 564           (b) discovery of the error.

565           Section 26. Section **61-2c-513** is enacted to read:

566           **61-2c-513. Enforcement by division - Private right of action.**

567           (1) If the division receives a complaint concerning a violation of this part, the division

568 shall investigate the complaint and enforce this part pursuant to Part 4, Enforcement.

569           (2) A borrower may bring an action in any state court of competent jurisdiction against

570 a lender that violates this part.

571           (3) In an action under Subsection (2), a person may:

- 572           (a) recover the amount of any actual damages caused by the violation of this part;
- 573           (b) void a high-cost dwelling loan that violates this part; and
- 574           (c) recover court costs and reasonable attorney fees as determined by the court.