

**MORTGAGE ACT AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Wayne A. Harper**

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**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:**

This bill appropriates:

- ▶ \$61,250 for fiscal year 2004-05 from the Commerce Service Fund to the Department of Commerce.

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**61-2d-101**, Utah Code Annotated 1953

**61-2d-102**, Utah Code Annotated 1953

**61-2d-103**, Utah Code Annotated 1953

- 61-2d-104**, Utah Code Annotated 1953
- 61-2d-105**, Utah Code Annotated 1953
- 61-2d-106**, Utah Code Annotated 1953
- 61-2d-107**, Utah Code Annotated 1953
- 61-2d-109**, Utah Code Annotated 1953
- 61-2d-110**, Utah Code Annotated 1953
- 61-2d-111**, Utah Code Annotated 1953
- 61-2d-112**, Utah Code Annotated 1953
- 61-2d-113**, Utah Code Annotated 1953
- 61-2d-114**, Utah Code Annotated 1953
- 70D-1-21**, Utah Code Annotated 1953

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

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

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

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

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

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

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

As used in this part:

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

(2) "Borrower" means a person that:

(a) seeks a high-cost mortgage; or

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

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

(a) the transaction is secured by a first mortgage on the borrower's principal dwelling and the annual percentage rate on the credit, at the consummation of the transaction, will exceed by more than eight percentage points the yield on treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the lender;

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

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

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

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

(4) "Lender" means a person that:

(a) offers a high-cost mortgage; or

(b) extends a high-cost mortgage; and

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

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

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

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

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

(6) "Residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the borrower's principal dwelling to finance the acquisition or initial construction of that dwelling.

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

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

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

(i) the borrower dies;

(ii) the dwelling is transferred; or

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

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

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

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

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

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

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

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

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

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

(4) If a prepayment does not pay the full amount owed on the high-cost mortgage when the prepayment is made, the penalty shall be reduced by a percentage equal to the percentage of the balance owed before the prepayment that remains unpaid.

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

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

A high cost mortgage shall provide for regular, periodic payments sufficient to pay:

(1) all accrued interest and a portion of principal on the scheduled due date for each payment; and

(2) the full amount owed during the term of the loan, if no late fees or other contingent charges are incurred.

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

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

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

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

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

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

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

(2) The disclosures required by this section shall be given to the borrower no less than three business days prior to consummation of the transaction.

(3) After providing the disclosure required by this section, a lender may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

(4) A lender may provide new disclosures pursuant to Subsection (3) by telephone, if:

(a) the change is initiated by the borrower; and

(b) at the consummation of the transaction under which the credit is extended:

(i) the lender provides to the borrower the new disclosures in writing; and

(ii) the lender and borrower certify in writing that the new disclosures were provided by telephone, at least three days prior to the date of consummation of the transaction.

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

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

To be valid, an arbitration clause in a high-cost mortgage contract must comply with the standards set forth in Title 78, Chapter 31a, Utah Uniform Arbitration Act or the Federal Arbitration Act, or any successor acts.

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

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

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

(1) the offer or sale of any insurance policy, on a single premium or single fee basis, that insures, guarantees, or indemnifies the repayment of the outstanding balance of the loan against:

(a) death;

(b) illness;

(c) accident;

(d) disability; or

(e) unemployment of the borrower; or

(2) debt cancellation or a debt suspension agreement.

Section 8. Section **61-2d-109** is enacted to read:

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

The lender shall provide, at no cost to the borrower, a complete set of all documents pertaining to the transaction, including copies of all documents to be executed or recorded and any loan documents changed at the closing:

(1) at the time of the closing if done in person; or

(2) no later than three business days from the closing if done by mail or any other format.

Section 9. Section **61-2d-110** is enacted to read:

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

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

(2) This section applies to all loans.

Section 10. Section **61-2d-111** is enacted to read:

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

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

Section 11. Section **61-2d-112** is enacted to read:

**61-2d-112. Notice of information available to borrowers.**

(1) In addition to any other notice or disclosure a lender or title company may provide to a borrower seeking, obtaining, or inquiring about a high-cost mortgage, the lender shall provide the borrower any brochure or other document information prepared by a federal or state authority in a form intended to inform consumers about home loans or consumer credit on financing or educational resources on financing.

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

(a) the posting, in a public area of the office, notice indicating that educational resources

are available:

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

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

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

Section 12. Section **61-2d-113** is enacted to read:

**61-2d-113. Effect of failure to comply.**

Failure to provide the notices or information described in Subsection 61-2d-105(1) and Sections 61-2d-111 and 61-2d-112 does not affect the enforceability of the loan or any of its terms.

Section 13. Section **61-2d-114** is enacted to read:

**61-2d-114. Increase in employees.**

Funds allocated for investigations in this chapter may only be used to employ additional employees if there is a 10% increase in caseloads.

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

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

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

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

Section 15. **Appropriation.**

There is appropriated for fiscal year 2004-05 \$61,250 from the Commerce Service Fund to the Department of Commerce, Commerce Regulation.