

1 **MORTGAGE ACT AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Wayne A. Harper**

5

6 **LONG TITLE**

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ provides definitions;
- 12 ▶ enacts provisions regarding prepayment penalties;
- 13 ▶ places limitations on interest rates after default;
- 14 ▶ prohibits balloon payments and negative amortization;
- 15 ▶ places restrictions on financing of points and fees;
- 16 ▶ places restrictions on the arbitration clause;
- 17 ▶ prohibits single premium credit life insurance;
- 18 ▶ places limitations on refinancing;
- 19 ▶ enacts requirements relating to home improvement contracts;
- 20 ▶ prohibits inclusion of terms that give the lender sole discretion to accelerate the
- 21 indebtedness;
- 22 ▶ prohibits an increase in the interest rate upon default;
- 23 ▶ prohibits scheduled payments that are more than twice as large as the average of
- 24 earlier scheduled payments; and
- 25 ▶ requires the lender to provide the borrower a full copy of all documents pertaining
- 26 to the transaction.

27 **Monies Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **61-2d-101**, Utah Code Annotated 1953

34 **61-2d-102**, Utah Code Annotated 1953

35 **61-2d-103**, Utah Code Annotated 1953

36 **61-2d-104**, Utah Code Annotated 1953

37 **61-2d-105**, Utah Code Annotated 1953

38 **61-2d-106**, Utah Code Annotated 1953

39 **61-2d-107**, Utah Code Annotated 1953

40 **61-2d-108**, Utah Code Annotated 1953

41 **61-2d-109**, Utah Code Annotated 1953

42 **61-2d-110**, Utah Code Annotated 1953

43 **61-2d-111**, Utah Code Annotated 1953

44 **61-2d-112**, Utah Code Annotated 1953

45 **61-2d-113**, Utah Code Annotated 1953

46 **61-2d-114**, Utah Code Annotated 1953

47 **61-2d-115**, Utah Code Annotated 1953

48 **61-2d-116**, Utah Code Annotated 1953

49 **61-2d-117**, Utah Code Annotated 1953

50 **61-2d-118**, Utah Code Annotated 1953

51 **61-2d-119**, Utah Code Annotated 1953

52 **61-2d-120**, Utah Code Annotated 1953

53 **70D-1-21**, Utah Code Annotated 1953

54

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

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

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

58 **61-2d-101. Title.**

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

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

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

62 As used in this part:

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

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

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

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

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

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

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

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

83 (ii) the \$400 figure shall be adjusted annually on January 1 to match the adjusted
84 number adopted by the Board of Governors of the Federal Reserve in accordance with Section
85 226.32(a)(1)(ii) of the Code of Federal Regulations. If the Board of Governors of the Federal
86 Reserve System does not announce an adjusted figure, the last adjustment of the \$400 figure
87 shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price
88 Index that was reported on the preceding June 1; and

89 (d) the loan is made by or originated through a broker required to hold a license as

90 provided in Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

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

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

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

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

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

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

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

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

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

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

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

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

111 (i) the borrower dies;

112 (ii) the dwelling is transferred; or

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

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

115 **61-2d-103. Prepayment penalty.**

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

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

120 (b) The amount of the penalty may not exceed the total amount of interest paid at 80%

121 of the immediately preceding six scheduled payments.

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

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

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

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

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

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

134 **61-2d-104. Increased interest rate after default -- Prohibited.**

135 (1) A high-cost mortgage may not provide for an interest rate applicable after default
136 that is higher than the interest rate that applies before the default.

137 (2) (a) If the date of maturity of a high-cost mortgage is accelerated due to default and
138 the borrower is entitled to a rebate of interest, the rebate shall be computed by any method that
139 is not less favorable than the actuarial method.

140 (b) A lender may elect to apply a rebate of interest as provided in this section to reduce
141 the principal owed on the loan.

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

143 **61-2d-105. Balloon payments -- Prohibited.**

144 (1) A high-cost mortgage having a term of less than five years may not include terms
145 under which the aggregate amount of the regular periodic payments would not fully amortize
146 the outstanding principal.

147 (2) A high-cost mortgage may not require a scheduled payment that is more than twice
148 as large as the average of earlier scheduled payments.

149 (3) This section does not apply when the payment schedule is adjusted to account for
150 the seasonal or irregular income of the obligor as provided in the high-cost mortgage trust deed
151 or if the purpose of the loan is a bridge loan made in connection with the acquisition or

152 construction of a dwelling intended to become the obligor's principal dwelling.

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

154 **61-2d-106. Negative amortization prohibited.**

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

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

159 **61-2d-107. Financing points and fees -- Restrictions.**

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

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

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

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

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

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

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

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

179 (ii) the regular monthly repayment; or

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

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

182 (ii) the amount of the regular monthly payment;

183 (iii) a statement that the interest rate and monthly payment may increase; and
184 (iv) the amount of the maximum monthly payment, based on the maximum interest
185 rate allowed.

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

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

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

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

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

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

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

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

198 **61-2d-108. Arbitration clauses.**

199 (1) A high-cost mortgage may not be subject to a mandatory arbitration clause that is
200 oppressive, unfair, unconscionable, or substantially in derogation of the rights of borrowers.

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

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

205 **61-2d-109. Prohibition on single premium credit life insurance.**

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

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

209 (a) death;

210 (b) illness;

211 (c) accident;

212 (d) disability; or

213 (e) unemployment of the borrower; or

214 (2) debt cancellation or a debt suspension agreement.

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

216 **61-2d-110. Limitations on refinancing.**

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

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

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

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

229 **61-2d-111. Requirements relating to home improvement contracts.**

230 A lender may not make a payment to a contractor under a home improvement contract
231 from amounts extended as credit under a high-cost mortgage other than in the form of an
232 instrument that is payable to the borrower or jointly to the borrower and the contractor.

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

234 **61-2d-112. No call provision.**

235 (1) A high-cost mortgage may not include terms that give the lender sole discretion to
236 accelerate the indebtedness.

237 (2) This section does not apply when repayment of the loan has been accelerated:

238 (a) by default or pursuant to a due-on-sale provision or some other provision of the
239 loan document unrelated to the payment schedule; or

240 (b) due to any action or omission by the borrower that adversely affects the lender's
241 security interest in the residence or any rights of the lender in such security.

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

243 **61-2d-113. Increased interest rate upon default prohibited.**

244 In the case of a high-cost mortgage subject to a variable rate of interest based on an

245 index or rate of interest which is publicly available and is not under the control of the lender, an
246 increase in the interest rate upon default is prohibited unless it is due to a change in the index
247 for a variable rate mortgage.

248 Section 14. Section **61-2d-114** is enacted to read:

249 **61-2d-114. Copies.**

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

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

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

256 Section 15. Section **61-2d-115** is enacted to read:

257 **61-2d-115. Prohibition on extending credit without regard to payment ability of**
258 **borrower.**

259 (1) A lender may not engage in a pattern or practice of extending credit to borrowers
260 under high-cost mortgages based on the borrowers' collateral without regard to the borrowers'
261 repayment ability, including the borrowers':

262 (a) current and expected income;

263 (b) current obligations; and

264 (c) employment.

265 (2) A lender may not rely on a borrower's statement of income for purposes of this
266 section if the borrower has no earned income.

267 Section 16. Section **61-2d-116** is enacted to read:

268 **61-2d-116. Encouraging default prohibited.**

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

272 (2) This section applies to all loans.

273 Section 17. Section **61-2d-117** is enacted to read:

274 **61-2d-117. Mortgage forms.**

275 All lines, figures, forms, and blanks that regulate, govern, control, and authorize a

276 mortgage must be filled in before the documents are signed.

277 Section 18. Section **61-2d-118** is enacted to read:

278 **61-2d-118. Mailing estimates and documents --72-hour requirement.**

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

281 Section 19. Section **61-2d-119** is enacted to read:

282 **61-2d-119. Prohibitions for all home loans.**

283 (1) A lender may not make a home loan that finances, directly or indirectly:

284 (a) any credit life, credit accident, credit health, credit personal property, or credit
285 loss-of-income insurance, debt suspension coverage, or debt cancellation coverage, whether
286 such coverage is insurance under applicable law, that provides for cancellation of all or part of
287 a borrower's liability in the event of loss of life, health, personal property, or income or in the
288 case of accident written in connection with a home loan; or

289 (b) any life, accident, health, or loss-of-income insurance without regard to the identity
290 of the ultimate beneficiary of such insurance.

291 (2) A lender or servicer of a high-cost mortgage may not recommend or encourage
292 default on an existing loan or other debt to and in connection with the closing or planned
293 closing of a home loan that refinances all or any portion of such existing loan or debt.

294 (3) (a) A lender or servicer of a high-cost mortgage may not charge a borrower a late
295 payment charge unless the loan documents specifically authorize the charge, the charge is not
296 imposed unless the payment is past due for ten days or more, and the charge does not exceed
297 4% of the amount of the late payment;

298 (b) a late payment charge may not be imposed more than once with respect to a
299 particular late payment;

300 (c) if a late payment charge is deducted from a payment made on the home loan and
301 such deduction results in a subsequent default on a subsequent payment, a late payment charge
302 may not be imposed for such default; and

303 (d) a lender may apply any payment made in the order of maturity to a prior period's
304 payment due even if the result is late payment charges accruing on subsequent payments due.

305 (4) A lender or servicer of a high-cost mortgage may not charge a fee for informing or
306 transmitting to any person the balance due to pay off a home loan or to provide a release upon

307 prepayment. When such information is provided by facsimile or if it is provided upon request
308 within 60 days of the fulfillment of a previous request, a lender or servicer may charge a
309 processing fee up to \$10. Payoff balances shall be provided within a reasonable time but no
310 more than five business days after the request is made.

311 Section 20. Section **61-2d-120** is enacted to read:

312 **61-2d-120. Notice of information available to borrowers.**

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

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

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

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

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

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

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

327 **70D-1-21. Ordinance or law by political subdivision prohibited.**

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

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

Legislative Review Note

as of 1-28-04 9:26 AM

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

Office of Legislative Research and General Counsel

State Impact

Costs can be handled within existing budgets.

Individual and Business Impact

Business impacts will vary according to how much mortgage brokers and lenders are already in compliance with the bills provisions. Some individuals may experience lower loan costs but impacts will vary according to circumstances.

Office of the Legislative Fiscal Analyst