

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

**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:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

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



- 26           **61-2d-102**, Utah Code Annotated 1953
- 27           **61-2d-103**, Utah Code Annotated 1953
- 28           **61-2d-104**, Utah Code Annotated 1953
- 29           **61-2d-105**, Utah Code Annotated 1953
- 30           **61-2d-106**, Utah Code Annotated 1953
- 31           **61-2d-107**, Utah Code Annotated 1953
- 32           **61-2d-108**, Utah Code Annotated 1953
- 33           **61-2d-109**, Utah Code Annotated 1953
- 34           **61-2d-110**, Utah Code Annotated 1953
- 35           **61-2d-111**, Utah Code Annotated 1953
- 36           **61-2d-112**, Utah Code Annotated 1953
- 37           **61-2d-113**, Utah Code Annotated 1953
- 38           **70D-1-21**, Utah Code Annotated 1953



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

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

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

43           **61-2d-101. Title.**

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

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

46           **61-2d-102. Definitions.**

47           As used in this part:

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

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

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

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

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

56           (a) the transaction is secured by a first mortgage on the borrower's principal dwelling

57 and the annual percentage rate on the credit, at the consummation of the transaction, will  
58 exceed by more than eight percentage points the yield on treasury securities having comparable  
59 periods of maturity on the 15th day of the month immediately preceding the month in which  
60 the application for the extension of credit is received by the lender;

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

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

68 (ii) the \$400 figure shall be adjusted annually on January 1 to match the adjusted  
69 number adopted by the Board of Governors of the Federal Reserve in accordance with Section  
70 226.32(a)(1)(ii) of the Code of Federal Regulations. If the Board of Governors of the Federal  
71 Reserve System does not announce an adjusted figure, the last adjustment of the \$400 figure  
72 shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price  
73 Index that was reported on the preceding June 1; and

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

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

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

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

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

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

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

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

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

86 (6) "Residential mortgage transaction" means a transaction in which a mortgage, deed  
87 of trust, purchase money security interest arising under an installment sales contract, or

88 equivalent consensual security interest is created or retained in the borrower's principal  
89 dwelling to finance the acquisition or initial construction of that dwelling.

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

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

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

96 (i) the borrower dies;

97 (ii) the dwelling is transferred; or

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

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

100 **61-2d-103. Prepayment penalty.**

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

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

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

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

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

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

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

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

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

119 **61-2d-104. Negative amortization prohibited.**

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

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

124 **61-2d-105. Financing points and fees -- Restrictions.**

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

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

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

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

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

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

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

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

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

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

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

149 (ii) the lender and borrower certify in writing that the new disclosures were provided

150 by telephone, at least three days prior to the date of consummation of the transaction.

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

152 **61-2d-106. Arbitration clauses.**

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

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

157 **61-2d-107. Prohibition on single premium credit life insurance.**

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

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

161 (a) death;

162 (b) illness;

163 (c) accident;

164 (d) disability; or

165 (e) unemployment of the borrower; or

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

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

168 **61-2d-108. Limitations on refinancing.**

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

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

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

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

181 **61-2d-109. Copies.**

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

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

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

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

189 **61-2d-110. Encouraging default prohibited.**

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

193 (2) This section applies to all loans.

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

195 **61-2d-111. Mortgage forms.**

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

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

199 **61-2d-112. Notice of information available to borrowers.**

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

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

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

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

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

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

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

215 **61-2d-113. Effect of failure to comply.**

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

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

220 **70D-1-21. Ordinance or law by political subdivision prohibited.**

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

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