

A bill for an act
relating to financial institutions; requiring counseling and disclosures with
respect to high-cost home loans; proposing coding for new law in Minnesota
Statutes, chapter 58.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[58.31] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 58.31 to 58.34, the terms defined
in this section have the meanings given them.

Subd. 2. **Authorized independent home loan counselor.** "Authorized independent
home loan counselor" means a nonprofit, third-party individual or organization authorized
to provide housing, loan, or credit counseling by either the Housing Finance Agency or
the United States Department of Housing and Urban Development.

Subd. 3. **Bona fide loan discount points.** "Bona fide loan discount points" means
loan discount points knowingly paid by the borrower that actually reduce the interest rate;
provided that the undiscounted interest rate does not exceed by more than one percentage
point the required net yield for a 90-day standard mandatory commitment for a loan with a
reasonably comparable term from Fannie Mae or Freddie Mac, whichever is greater.

Subd. 4. **Borrower.** "Borrower" means any natural person obligated to repay the
loan, including a coborrower, cosigner, or guarantor.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 6. **High-cost home loan.** "High-cost home loan" means a home loan that
meets or exceeds one or more of the thresholds as defined in subdivision 14.

Subd. 7. **Home loan.** "Home loan" means a loan, including a home equity line of
credit or an open-end credit plan but not including a reverse mortgage, where the loan is:

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- (1) a residential mortgage loan as defined in section 58.02, subdivision 18;
(2) secured by a mortgage or deed on real property that is used as a borrower's primary residence; and
(3) equal to or less than the maximum amount for loans eligible for sale to Fannie Mae or Freddie Mac.

For the purposes of this chapter, a home loan includes a loan that is secured by a security interest in a manufactured home, as defined in section 327B.01, subdivision 13, which is used as a borrower's primary residence.

Subd. 8. **Interest rate.** "Interest rate" means:

- (1) for a fixed rate loan, the interest rate as of the date of closing;
(2) for an indexed variable rate loan, the sum of the index rate as of the date of closing plus the maximum margin permitted at any time under the loan agreement; or
(3) for all other variable rate loans, the maximum rate that may be charged during the term of the loan.

Subd. 9. **Lender.** "Lender" means any person who is or should be licensed, regulated, or authorized to do business under chapter 47, 48, 50, 51A, 52, 53, 56, or 58, or who is regulated by the federal Comptroller of the Currency, the federal Office of Thrift Supervision, or the National Credit Union Administration. Lender includes a mortgage broker, as defined in section 58.02, subdivision 13.

Subd. 10. **Lender fees.** "Lender fees" means:

- (1) points, other than up to two bona fide discount points, fees, compensation, premiums, or any amounts paid or payable, directly or indirectly, other than taxes and interest, to the lender or a third party in connection with the loan transaction;
(2) the maximum prepayment fees and penalties that may be charged or collected under the terms of the loan; and
(3) all prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made by the same lender or an affiliate of the lender.

For open-ended loans, the lender fees are calculated by adding the total fees charged at closing and the maximum additional fees that may be charged pursuant to the loan documents during the term of the loan.

Subd. 11. **Person.** "Person" means an individual, corporation, business trust, partnership or association, or any other legal entity.

Subd. 12. **Rate.** "Rate" means the interest rate charged on the home loan, based on an annual simple interest yield.

Subd. 13. **Seller.** "Seller" means the seller of residential real property.

Subd. 14. **Thresholds.** "Thresholds" means any one of the following:

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(1) for a first lien mortgage, an interest rate that equals or exceeds 2.5 percentage points over the yield on United States Treasury securities of a comparable period of maturity as of the 15th day of the month in which the interest rate on the home loan is set; or

(2) for a second lien mortgage, an interest rate that equals or exceeds five percentage points over the yield on United States Treasury securities of a comparable period of maturity as of the 15th day of the month in which the interest rate on the home loan is set; or

(3) lender fees that exceed:

(i) for loans in which the total loan amount is \$30,000 or more, the lender fees exceed three percent of the total loan amount; or

(ii) for loans in which the total loan amount is less than \$30,000, the lender fees exceed the lesser of five percent of the total loan amount or \$900.

Subd. 15. **Total loan amount.** "Total loan amount" means the principal of the loan minus lender fees that are included in the principal amount of the loan. For open-end loans, the total loan amount must be calculated using the total line of credit allowed under the home loan.

Sec. 2. [58.32] REQUIRED COUNSELING FOR HIGH-COST HOME LOANS.

A lender may not make a high-cost home loan unless it first receives certification from an authorized independent home loan counselor that the borrower has received counseling on the advisability of the loan transaction. Counseling shall be allowed in whole or in part by telephonic means. The commissioner shall maintain a list of authorized independent home loan counselors. A high-cost home loan originated by a lender in violation of this section shall not be enforceable.

Sec. 3. [58.33] DISCLOSURES.

Subdivision 1. **Written notice required; timing of notice.** A lender shall provide a written disclosure notice to all applicants for a home loan:

(1) upon determination by the lender that the home loan is a high-cost home loan; and

(2) again no less than seven days prior to closing.

The disclosure notice must be provided separately from the provision of any other written document or oral statement.

Subd. 2. **Form and content of notice.** (a) The notice, which must be contained on a single sheet of paper, must contain a legend, centered at the top of the loan document, in bold, capital letters and in 28-point type stating, "THIS IS A HIGH-COST HOME LOAN."

(b) The notice must also contain the following verbatim statements in capital and small type, in a minimum of 14-point type, with at least a double space between each statement:

(1) "You could lose your home and all the money you have put into it if you do not meet the obligations under the loan."

(2) "Interest rates and fees vary. You should shop around for the best terms."

(3) "You may have to pay property taxes and homeowner's insurance in addition to your monthly loan payments."

(4) "You do not have to complete any loan agreement just because you have gotten this notice or because you signed a loan application."

(5) "You may wish to have a lawyer or other competent individual review with you the loan documents, which you will be required to sign at closing."

(c) If the home loan contains a prepayment penalty, the notice must state, "This loan requires you to pay a penalty for early repayment of the loan. This is called a 'Prepayment Penalty.' This charge may discourage or prevent future refinancing."

Sec. 4. [58.34] ENFORCEMENT.

Subdivision 1. **Jurisdiction; civil penalties.** (a) The commissioner may bring an enforcement action under chapter 45 against a lender who has violated sections 58.31 to 58.34.

(b) The public and private remedies in section 8.31 apply to violations of sections 58.31 to 58.34.

Subd. 2. **Consumer remedies.** A court in which any action is brought by a borrower for relief against a lender, upon a finding of a violation of this chapter, shall award to the prevailing borrower:

(1) actual damages, including incidental and consequential damages; a borrower must not be required to demonstrate reliance in order to receive actual damages;

(2) reasonable attorney fees; and

(3) court costs.

Subd. 3. **Resolution of disputes.** Any provision of a high-cost home loan that requires the borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of the dispute than a judicial forum established in a state where the borrower may otherwise properly bring a claim or defense, or limits in any way any claim or defense the borrower may have, is unconscionable and void.

Subd. 4. **Equitable relief.** A court in which any action is brought by a borrower for relief against a lender or seller, upon a finding of a violation of this chapter, may

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5.1 enjoin foreclosure and grant declaratory and any other such equitable relief as the court
5.2 deems appropriate.

5.3 Subd. 5. **Right of rescission.** The right of rescission granted under United States
5.4 Code, section 1601, et seq., for violations of that law and all other remedies provided in
5.5 this section are available to a borrower by way of recoupment against a party foreclosing
5.6 on the home loan or collecting on the loan, at any time during the term of the loan.

5.7 Subd. 6. **Remedies cumulative.** The remedies provided in this section are
5.8 cumulative and in addition to any other remedies provided by law.

5.9 Sec. 5. **EFFECTIVE DATE.**

5.10 This act is effective January 1, 2008.