

A bill for an act

relating to mortgages; prohibiting certain predatory lending practices; prescribing criminal penalties; providing remedies; amending Minnesota Statutes 2006, sections 58.02, by adding subdivisions; 58.13, subdivision 1; 58.137, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 58; 82B.

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

Section 1. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to read:

Subd. 27. **Investment grade.** When used in reference to residential mortgage loans, "investment grade" refers to a system of categorizing residential mortgage loans in which the pricing or terms are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure.

Sec. 2. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to read:

Subd. 28. **Prime loan.** "Prime loan" means a residential mortgage loan that is of the highest investment grade and which is commonly designated by an alphabetical character of "A."

Sec. 3. Minnesota Statutes 2006, section 58.02, is amended by adding a subdivision to read:

2.1 Subd. 29. **Subprime loan.** "Subprime loan" means a residential mortgage loan
2.2 that is of less than the highest investment grade, and which is commonly designated by
2.3 an alphabetical character of "A-" to "D."

2.4 Sec. 4. Minnesota Statutes 2006, section 58.13, subdivision 1, is amended to read:

2.5 Subdivision 1. **Generally.** No person acting as a residential mortgage originator
2.6 or servicer, including a person required to be licensed under this chapter, and no person
2.7 exempt from the licensing requirements of this chapter under section 58.04, shall:

2.8 (1) fail to maintain a trust account to hold trust funds received in connection with a
2.9 residential mortgage loan;

2.10 (2) fail to deposit all trust funds into a trust account within three business days of
2.11 receipt; commingle trust funds with funds belonging to the licensee or exempt person; or
2.12 use trust account funds for any purpose other than that for which they are received;

2.13 (3) unreasonably delay the processing of a residential mortgage loan application,
2.14 or the closing of a residential mortgage loan. For purposes of this clause, evidence of
2.15 unreasonable delay includes but is not limited to those factors identified in section 47.206,
2.16 subdivision 7, clause (d);

2.17 (4) fail to disburse funds according to its contractual or statutory obligations;

2.18 (5) fail to perform in conformance with its written agreements with borrowers,
2.19 investors, other licensees, or exempt persons;

2.20 (6) charge a fee for a product or service where the product or service is not actually
2.21 provided, or misrepresent the amount charged by or paid to a third party for a product
2.22 or service;

2.23 (7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property
2.24 law;

2.25 (8) violate any provision of any other applicable state or federal law regulating
2.26 residential mortgage loans including, without limitation, sections 47.20 to 47.208;

2.27 (9) make or cause to be made, directly or indirectly, any false, deceptive, or
2.28 misleading statement or representation in connection with a residential loan transaction
2.29 including, without limitation, a false, deceptive, or misleading statement or representation
2.30 regarding the borrower's ability to qualify for any mortgage product;

2.31 (10) conduct residential mortgage loan business under any name other than that
2.32 under which the license or certificate of exemption was issued;

2.33 (11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for
2.34 the purpose of influencing the independent judgment of the appraiser with respect to the

value of real estate that is to be covered by a residential mortgage or is being offered as security according to an application for a residential mortgage loan;

(12) issue any document indicating conditional qualification or conditional approval for a residential mortgage loan, unless the document also clearly indicates that final qualification or approval is not guaranteed, and may be subject to additional review;

(13) make or assist in making any residential mortgage loan with the intent that the loan will not be repaid and that the residential mortgage originator will obtain title to the property through foreclosure;

(14) provide or offer to provide for a borrower, any brokering or lending services under an arrangement with a person other than a licensee or exempt person, provided that a person may rely upon a written representation by the residential mortgage originator that it is in compliance with the licensing requirements of this chapter;

(15) claim to represent a licensee or exempt person, unless the person is an employee of the licensee or exempt person or unless the person has entered into a written agency agreement with the licensee or exempt person;

(16) fail to comply with the record keeping and notification requirements identified in section 58.14 or fail to abide by the affirmations made on the application for licensure;

(17) represent that the licensee or exempt person is acting as the borrower's agent after providing the nonagency disclosure required by section 58.15, unless the disclosure is retracted and the licensee or exempt person complies with all of the requirements of section 58.16;

(18) make, provide, or arrange for a residential mortgage loan that is of a lower investment grade if the borrower's credit score or, if the originator does not utilize credit scoring or if a credit score is unavailable, then comparable underwriting data, indicates that the borrower may qualify for a residential mortgage loan, available from or through the originator, that is of a higher investment grade, unless the borrower is informed that the borrower may qualify for a higher investment grade loan with a lower interest rate and/or lower discount points, and consents in writing to receipt of the lower investment grade loan.

For purposes of this section, "investment grade" refers to a system of categorizing residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or "subprime"; (ii) commonly designated by an alphabetical character with "A" being the highest investment grade; and (iii) are distinguished by interest rate or discount points or both charged to the borrower, which vary according to the degree of perceived risk of default based on factors such as the borrower's credit, including credit score and

credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior bankruptcy or foreclosure;

(19) make, publish, disseminate, circulate, place before the public, or cause to be made, directly or indirectly, any advertisement or marketing materials of any type, or any statement or representation relating to the business of residential mortgage loans that is false, deceptive, or misleading;

(20) advertise loan types or terms that are not available from or through the licensee or exempt person on the date advertised, or on the date specified in the advertisement.

For purposes of this clause, advertisement includes, but is not limited to, a list of sample mortgage terms, including interest rates, discount points, and closing costs provided by licensees or exempt persons to a print or electronic medium that presents the information to the public;

(21) use or employ phrases, pictures, return addresses, geographic designations, or other means that create the impression, directly or indirectly, that a licensee or other person is a governmental agency, or is associated with, sponsored by, or in any manner connected to, related to, or endorsed by a governmental agency, if that is not the case; ~~or~~

(22) violate section 82.49, relating to table funding;

(23) make, provide, or arrange for a residential mortgage loan all or a portion of the proceeds of which are used to fully or partially pay off a "special mortgage" unless the borrower has obtained a written certification from a counselor with a third-party nonprofit or governmental organization approved by the United States Department of Housing and Urban Development or the commissioner that the borrower has received counseling on the advisability of the loan transaction. The commissioner shall maintain a list of approved counseling programs. For purposes of this section, "special mortgage" means a residential mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that bears one or more of the following nonstandard payment terms which substantially benefit the borrower: (i) payments vary with income; (ii) payments of principal or interest are not required or can be deferred under specified conditions; (iii) principal or interest is forgivable under specified conditions; or (iv) where no interest or an annual interest rate of two percent or less is charged in connection with the loan.

Sec. 5. Minnesota Statutes 2006, section 58.137, subdivision 2, is amended to read:

Subd. 2. **Prepayment penalties.** (a) A residential mortgage originator making a residential mortgage loan that is a prime loan to a borrower located in this state shall not charge, receive, or collect any prepayment penalty, fee, premium, or other charge:

(1) for any partial prepayment of the residential mortgage loan; or

(2) for any prepayment of the residential mortgage loan upon the sale of any residential real property, or the sale of any stock, interest, or lease relating to cooperative ownership of residential real property, securing the loan; or

(3) for any prepayment of the residential mortgage loan if the prepayment is made more than 42 months after the date of the note or other agreement for the residential mortgage loan; or

(4) for any prepayment of the residential mortgage loan if the aggregate amount of all prepayment penalties, fees, premiums, and other charges exceeds the lesser of (i) an amount equal to two percent of the unpaid principal balance of the residential mortgage loan at the time of prepayment, or (ii) an amount equal to 60 days' interest, at the interest rate in effect on the residential mortgage loan at the time of prepayment, on the unpaid principal balance of the residential mortgage loan at the time of prepayment.

(b) If a residential mortgage originator offers or makes residential mortgage loans to any borrowers located in this state with prepayment penalties, fees, premiums, or other charges exceeding the maximum amount under paragraph (a), clause (4), then the residential mortgage originator shall provide the following disclosure to each prospective borrower located in this state that requests a residential mortgage loan from the residential mortgage originator, whether or not the prospective borrower receives a residential mortgage loan:

THIS IS VERY IMPORTANT

THIS LENDER CHARGES YOU A SUBSTANTIAL PENALTY IF YOU PAY OFF OR REFINANCE YOUR LOAN BEFORE MATURITY. ASK THE LENDER HOW MUCH THE PENALTY WILL BE FOR YOUR LOAN.

The residential mortgage originator shall read the disclosure to the prospective borrower when the prospective borrower requests a residential mortgage loan, and again within three days before the borrower signs the note or other agreement for the residential mortgage loan. The residential mortgage originator also shall provide the disclosure to the prospective borrower in writing so that it is received by the prospective borrower within five days after the residential mortgage originator receives the prospective borrower's request for a residential mortgage loan, and again within three days before the prospective borrower signs the note or other agreement for the residential mortgage loan. The written disclosure must be stated in at least 16-point capitalized boldface type on a single sheet of paper that contains only the disclosure, the date on which the disclosure form is sent or provided, the name, address, and telephone number of the residential mortgage originator, the name and address of the prospective borrower, and, at the option of the residential

mortgage originator, the prospective borrower's dated and signed acknowledgment of receipt of the disclosure form. The provisions of the disclosure form, other than the disclosure in this subdivision, are not required to be in at least 16-point capitalized boldface type. The prospective borrower shall be permitted to keep a copy of each written disclosure form. When a prospective borrower asks a residential mortgage originator for information about a prepayment penalty, the residential mortgage originator shall give the prospective borrower the requested information, and shall tell the borrower the highest aggregate amount of the prepayment penalties, fees, premiums, and other charges that the residential mortgage originator would charge to the prospective borrower for prepayment of the residential mortgage loan one year after it is funded, based on a hypothetical unpaid principal balance of \$100,000 and also based on the highest interest rate that the residential mortgage originator would charge to the prospective borrower. A mortgage originator responding to requests for residential mortgage loans via the Internet may make the disclosure in a manner acceptable to the commissioner.

(c) A residential mortgage originator shall not enter into a subprime loan that contains a provision requiring or permitting the imposition of a penalty, fee, premium, or other charge in the event the residential mortgage loan is prepaid in whole or in part. This prohibition does not apply to any loan with a principal amount that, or, in the case of an open-end credit plan, in which the borrower's initial maximum credit limit, exceeds the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

Sec. 6. ~~[58.18]~~ PRIVATE RIGHT OF ACTION.

Subdivision 1. Remedies. A borrower injured by a violation of the standards, duties, prohibitions, or requirements of sections 58.13, 58.136, 58.137, and 58.16 shall have a private right of action and the court shall award:

(1) actual, incidental, and consequential damages;

(2) statutory damages equal to the amount of all lender fees included in the amount of the principal of the residential mortgage loan as defined in section 58.137;

(3) punitive damages as the court may allow. In determining punitive damages, the court should consider the severity and intentionality of the violation, the number of violations, and whether the violation was part of a pattern and practice of violations; and

(4) court costs and reasonable attorneys' fees.

Subd. 2. Private attorney general statute. A borrower injured by a violation of the standards, duties, prohibitions, or requirements of sections 58.13, 58.136, 58.137, and

58.16 also may bring an action under section 8.31. A private right of action by a borrower under this chapter is in the public interest.

Subd. 3. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any other right or remedy otherwise available to the borrower.

Subd. 4. **Exemption.** This section does not apply to a residential mortgage loan originated by a federal or state chartered bank, savings bank, or credit union.

Sec. 7. [58.19] CRIMINAL PENALTIES FOR GROSSLY UNSUITABLE LOANS.

Subdivision 1. **Definition.** For the purpose of this section, "grossly unsuitable" means:

(1) a residential mortgage loan for which the borrower lacked the capacity to repay the interest and principal of the loan, and the real estate taxes and home insurance on the property, at the time the loan was originated; or

(2) a residential mortgage loan made as a result of a loan application that contains materially false or fraudulent information as to the borrower's income, expenses, debts or assets.

Subd. 2. **Acts constituting; penalties.** Any person who makes a residential mortgage loan, or obtains or assists in obtaining from another person for a borrower a residential mortgage loan, that the person knows is grossly unsuitable for the borrower may be fined not more than \$75,000 or imprisoned for up to two years, or both. Prosecution or conviction for securing grossly unsuitable loans on behalf of borrowers will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.

Subd. 3. **Additional penalty for crime against a disabled or elderly person.** Any person who commits the criminal offense specified in this section against a senior citizen or disabled person may be fined an additional \$50,000 or imprisoned for up to two additional years, or both. For purposes of this subdivision, "senior citizen" and "disabled person" have the meanings given those terms in section 325F.71, subdivision 1.

Sec. 8. [82B.24] PRIVATE RIGHT OF ACTION.

Subdivision 1. **Remedies.** Any person injured by a violation of the standards, duties, prohibitions, or requirements of section 82B.20 or 82B.22 shall have a private right of action and the court shall award:

(1) actual, incidental, and consequential damages;

8.1 (2) statutory damages of no less than \$1,000 nor more than \$2,000; and

8.2 (3) punitive damages as the court may allow. In determining punitive damages,
8.3 the court should consider the severity and intentionality of the violation, the number of
8.4 violations, and whether the violation was part of a pattern and practice of violations; and

8.5 (4) court costs and reasonable attorneys fees.

8.6 Subd. 2. **Private attorney general statute.** A person injured by a violation of the
8.7 standards, duties, prohibitions, or requirements of section 82B.20 or 82B.22 also may
8.8 bring an action under section 8.31. A private right of action by a borrower under this
8.9 chapter is in the public interest.

8.10 Subd. 3. **Remedies cumulative.** The remedies provided in this section are
8.11 cumulative and do not restrict any other right or remedy otherwise available to the
8.12 borrower.