

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. 29. **Subprime loan.** "Subprime loan" means, in the case of an adjustable rate loan secured by a first lien on a dwelling that can increase in interest rate but not decrease in interest rate below the fully indexed rate at the time of origination, a loan for which the annual percentage rate (APR) is greater than two percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For all other loans secured by a first lien on a dwelling, the term means a loan for which the APR is greater than three percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

For loans secured by a subordinate lien on a dwelling, the term means a loan for which the APR is greater than five percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the preceding month if the rate is set between the first and the 14th day of the month and as of the 15th day of the current month if the rate is set on or after the 15th day.

2.1 For purposes of this section, the annual percentage rate has the meaning given in
2.2 Code of Federal Regulations, title 12, part 226.

2.3 Sec. 2. Minnesota Statutes 2006, section 58.13, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

2.32 (11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for
2.33 the purpose of influencing the independent judgment of the appraiser with respect to the
2.34 value of real estate that is to be covered by a residential mortgage or is being offered as
2.35 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 an authorized independent loan counselor that the borrower has received counseling on the advisability of the loan transaction. 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. For purposes of this section, "authorized independent loan counselor" means a nonprofit, third-party individual or organization providing homebuyer education programs, foreclosure prevention services, mortgage loan counseling or credit counseling certified by the United States Department of Housing and Urban Development, the Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention Association, AARP, or NeighborWorks America.

Sec. 3. 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. 4. [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. 5. **[58.19] RESIDENTIAL MORTGAGE FRAUD.**

Subdivision 1. **Residential mortgage fraud prohibited.** Whoever does any of the following commits residential mortgage fraud and may be sentenced as provided in subdivision 2:

(1) knowingly makes or causes to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) knowingly uses or facilitates the use of any deliberate and material misstatement, misrepresentation, or omission, knowing the same to contain a material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) knowingly facilitates, makes, or causes to be made a residential mortgage loan with the knowledge that, at the time the loan is originated, the borrower lacks the capacity to repay principal, interest, insurance, and property taxes; or

(4) conspires to violate any of the provisions of clause (1), (2), or (3).

An offense of residential mortgage fraud must not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, and interpretations related to the mortgage lending process.

Subd. 2. **Sentence.** Whoever violates this section shall be sentenced as provided in section 609.52, subdivision 3, based on the greater of (1) the value of the property, services, or other benefit wrongfully obtained or attempted to obtain; or (2) the aggregate economic loss suffered by any person as a result of the violation. Provided, the maximum term of imprisonment shall not exceed two years. Prosecution or conviction for violation of this section shall not bar prosecution or conviction for any other offense.

Subd. 3. **Additional penalty for crime against a disabled or elderly person.**

Any person who commits residential mortgage fraud 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 609.2336, subdivision 1.

Subd. 4. **Definitions.** For purposes of this section:

(1) "mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll subs; and any required disclosures; and

(2) "residential mortgage loan" has the meaning set forth in section 58.02, subdivision 18.

Sec. 6. **[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;

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

(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 person injured by a violation of the standards, duties, prohibitions, or requirements of section 82B.20 or 82B.22 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.