A bill for an act

relating to manufactured housing; providing for regulation of lending practices and default; providing notices and remedies; amending Minnesota Statutes 2006, sections 327.64; 327.65; 327.66; 327B.01, by adding subdivisions; 327B.08, by adding a subdivision; 327B.09, by adding a subdivision; 327B.12; proposing coding for new law in Minnesota Statutes, chapter 325B.

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

Section 1. **[325B.095] INTEREST, POINTS, FINANCE CHARGES, FEES, AND OTHER CHARGES.**

Subdivision 1. **Financed interest, points, finance charges, fees, and other charges.** A manufactured home lender making or modifying a manufactured home loan to a borrower located in this state must not include in the principal amount of any loan all or any portion of any lender fee in an aggregate amount exceeding five percent of the loan amount. "Lender fee" means interest, points, finance charges, fees, and other charges payable in connection with the manufactured home loan: (1) by the borrower to any manufactured home lender or broker or to any assignee of any manufactured home lender or broker; or (2) by the lender to a broker. Lender fee does not includes recording fees, taxes, passthroughs, or other amounts that are paid by any person to any government entity, filing office, or other third party that is not a manufactured home lender or broker or to any assignee of any manufactured home lender or broker. Lender fee also does not include any amount that is set aside to pay taxes or insurance on any property securing the manufactured home loan. "Loan amount" means: (1) for a line of credit, the maximum principal amount of the line of credit; and (2) for any other manufactured home loan, the principal amount of the loan excluding all interest, points, finance charges, fees, and other charges. A manufactured home lender or broker shall not charge, receive, or collect any

excess financed interest, points, finance charges, fees, or other charges described in this subdivision, or any interest, points, finance charges, fees, or other charges with respect to this excess.

Subd. 2. **Prepayment penalties.** A manufactured home lender or broker 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 manufactured home loan is prepaid in whole or in part.

Sec. 2. Minnesota Statutes 2006, section 327.64, is amended to read:

327.64 NOTICE OF DEFAULT; SERVICE.

Subdivision 1. **Generally.** When a default occurs under the terms of a security agreement covering a manufactured home as collateral, and the secured party desires to repossess the manufactured home, the secured party shall commence the repossession in a manner authorized by this section.

Subd. 1a. **First notice of default.** At least 180 days prior to seeking a court order pursuant to section 326.65, a secured party must send a first notice of default by registered or certified mail to the occupant of the manufactured home, and if the occupant is not the debtor, the debtor. The notice required by this section must be in at least 14-point boldface type and must be printed on colored paper that does not obscure or overshadow the content of the notice.

Subd. 1b. **Contents of first notice of default.** The notice required by this section must appear substantially as follows:

A repossession is being prepared which could result in your loss of ownership of your house and any accumulated value (equity) you may have in this property. As of ..... at ....., you owe $..... to bring your home loan current. You must pay this amount in order to prevent your house from going through the repossession process.

As soon as possible, you are encouraged to contact your lender, (name of lender) at (phone number) to discuss possible options for preventing repossession as well as seek counseling with the foreclosure prevention counselor in your area. Nearby community agencies will answer your questions, offer free advice, and help you create a plan. You can contact the Minnesota Home Ownership Center at 651-659-6646 or www.hocmn.org to get the phone number and location of the nearest counseling organization. Call today. Waiting limits your options.

You will have 180 days to become current on your loan. If you do not do so, your lender will get a court order for repossession and you will need to vacate the home.

Subd. 2. **Second notice of default; service.** A secured party ~~may commence repossession of a manufactured home by~~ must personally ~~serving~~ serve upon the occupant of the ~~mobile~~ manufactured home ~~a notice~~ and, if the occupant is not the debtor, ~~by sending a registered or certified letter to the last known address of the debtor under the security agreement, both setting forth the circumstances constituting the default under the security agreement and stating that the secured party will at the expiration of a 30-day period following receipt of the notice seek a court order removing the occupant from the manufactured home and repossessing the manufactured home, unless the debtor or the occupant acting on behalf of the debtor cures the default prior to that time and in the manner provided by section 327.66. If notice is mailed to a debtor in accordance with this subdivision, the secured party by affidavit shall set forth the circumstances causing the secured party to believe that the debtor could be reached at the address to which the notice was mailed. The affidavit shall state that the secured party has no reason to believe that the debtor might receive mailed notice at another address~~ by personally serve upon the debtor, the second notice of default. This notice must be served upon the occupant and the homeowner at least 120 days prior to seeking a court order pursuant to section 327.65.

Subd. 3. **Contents of second notice of default.** The second notice of default must be in at least 14-point boldface type and must be printed on colored paper that does not obscure or overshadow the content of the notice. Each notice of default shall specify:

(1) the name of the secured party, the debtor, each assignee of the loan, if any, and the original or maximum principal amount secured by the loan;

(2) the date of the loan;

(3) the circumstances constituting the default under the security agreement, including the amount in arrears on the loans as of the date of the notice;

(4) a description of the manufactured home upon which the loan is secured, conforming substantially to that contained in the loan documents;

(5) the notice must also state: Your loan is currently in default. Contact us immediately at (phone number) to discuss possible options for preventing repossession. We encourage you to seek counseling with the foreclosure prevention counselor in your area. Nearby community agencies will answer your questions, offer free advice, and help you create a plan. You can contact the Minnesota Home Ownership Center at 651-659-6646 or www.hocmn.org to get the phone number and location of the nearest counseling organization. Call today. Waiting limits your options.

If you do not become current on your loan within 120 days, we will seek a court order repossessing the home, and by court order you will have to vacate the home.

Sec. 3. Minnesota Statutes 2006, section 327.65, is amended to read:

327.65 COURT ORDER.

Except in cases of voluntary repossession, upon expiration of the ~~30-day~~ 180-day period specified in the notices required by section 327.64, a secured party must apply to the district court in the county in which the manufactured home is located for an order pursuant to chapter 565 directing the seizure and delivery of the manufactured home. The application shall be accompanied by a copy of the security agreement entitling the secured party to repossession of the manufactured home, a copy of the notices required under 327.64, and ~~by the~~ an affidavit ~~required by section 327.64 if notice is mailed to the debtor.~~ of service stating that the notices required under section 327.46 were properly served upon the occupant, and if the occupant of the home is not the debtor, the debtor. The notices required by section 327.64 shall not be considered as satisfying any of the notice requirements under chapter 565.

Sec. 4. Minnesota Statutes 2006, section 327.66, is amended to read:

327.66 CURE OF DEFAULT.

A debtor, or an occupant of a manufactured home acting on behalf of a debtor, may within the ~~30 day~~ 180-day period specified in the notices required by section 327.64, cure a default by tendering full payment of the sums then in arrears under the terms of the security agreement, or by otherwise remedying the default, and by paying the reasonable costs, not to exceed the sum of $15, incurred by the secured party to enforce the security agreement. Cure of a default in accordance with the provisions of this section shall suspend the secured party's right to seek repossession of the manufactured home under the provisions of sections 327.61 to 327.67.

Sec. 5. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 2a. **Borrower.** "Borrower" means a person or persons applying for a manufactured home loan.

Sec. 6. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 4a. **Commissioner of commerce.** "Commissioner of commerce" means the commissioner of the Department of Commerce.

Sec. 7. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 4b. **Churning.** "Churning" means knowingly or intentionally making, providing, or arranging for a manufactured home loan when the new manufactured home loan does not provide a reasonable, tangible net benefit to the borrower considering all of the circumstances including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

Sec. 8. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 8a. **Fully indexed rate.** "Fully indexed rate" equals the index rate prevailing at the time a loan to a borrower is originated, plus the margin that will apply after the expiration of an introductory interest rate.

Sec. 9. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 10a. **Individual.** "Individual" means a human being.

Sec. 10. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 11a. **Licensee.** "Licensee" means a person who is licensed as a dealer, limited dealer, or manufacturer by the Department of Labor and Industry.

Sec. 11. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 11b. **Limited dealer or limited retailer.** "Limited dealer" or "limited retailer" means any person who is an owner of a manufactured home park, authorized as principal only, to engage in the sale, offering for sale, soliciting, or advertising the sale of used manufactured homes located in the owned manufactured home park, who is the title holder and engages in no more than ten sales annually.

Sec. 12. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 13a. **Manufactured home lender.** "Manufactured home lender" means a person who makes a manufactured home loan to a borrower, including a person who

provides table funding. A manufactured home lender includes an affiliate, subsidiary, or any person acting as an agent of the lender.

Sec. 13. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 13b. **Manufactured home loan.** "Manufactured home loan" means a loan made to a person or persons for the purchase, refinancing, improvement, or repair of a manufactured home.

Sec. 14. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 14a. **Manufacturing facility.** "Manufacturing facility" means the physical site where a manufacturer engages in the business of manufacturing, assembly, or production of manufactured homes.

Sec. 15. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 14b. **Negative amortization.** "Negative amortization" occurs when the borrower's compliance with any repayment option offered pursuant to the terms of the manufactured home loan is insufficient to satisfy the interest accruing on the loan, resulting in an increase in the loan balance. Negative amortization does not occur when a manufactured home loan is originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, and bears one or more of the following nonstandard payment terms that substantially benefit the borrower: payments vary with income; payments of principal and interest are deferred until the maturity date of the loan or the sale of the residence; principal or interest is forgivable under specified conditions; or where no interest or an annual interest rate of two percent or less is charged in connection with the loan.

Sec. 16. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 16a. **Owner.** "Owner" means any person holding title to a manufactured home park or manufactured homes.

Sec. 17. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision to read:

Subd. 19a. **Subprime loan.** "Subprime loan" means, in the case of an adjustable rate loan secured by a first lien on a manufactured home 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 manufactured home, 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 manufactured home, 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.

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

Sec. 18. Minnesota Statutes 2006, section 327B.08, is amended by adding a subdivision to read:

Subd. 6. **Duty of agency.** (a) A person acting as a broker shall be considered to have created an agency relationship with the borrower in all cases and shall comply with the following duties:

(1) brokers shall act in the borrower's best interest and in the utmost good faith toward borrowers, and shall not compromise a borrower's right or interest in favor of another's right or interest, including a right or interest of the broker. A broker shall not accept, give, or charge any undisclosed compensation or realize any undisclosed remuneration, either through direct or indirect means, that inures to the benefit of the broker on an expenditure made for the borrower;

(2) brokers will carry out all lawful instructions given by borrowers;

(3) brokers will disclose to borrowers all material facts of which the broker has knowledge which might reasonably affect the borrower's rights, interests, and/or ability to receive the borrower's intended benefit from the manufactured home loan, but not facts which are reasonably susceptible to the knowledge of the borrower;

(4) brokers will use reasonable care in performing duties; and

(5) brokers will account to a borrower for all the borrower's money and property received as an agent.

(b) The duty of agency between broker and borrower applies when the broker is acting in the capacity of manufactured home loan broker as described in section 327B.01, subdivision 3;

(c) Nothing in this section prohibits a broker from contracting for or collecting a reasonable fee for services rendered and which had been disclosed to the borrower in advance of the provision of such services.

(d) Nothing in this section requires a broker to obtain a loan containing terms or conditions not available to the broker in the broker's usual course of business, or to obtain a loan for the borrower from a manufactured home loan lender with whom the broker does not have a business relationship.

Sec. 19. Minnesota Statutes 2006, section 327B.09, is amended by adding a subdivision to read:

Subd. 6. **Standards of conduct.** (a) No manufactured home lender shall:

(1) make or broker a manufactured home loan without being licensed by the commissioner of commerce;

(2) fail to maintain a trust account to hold trust funds received in connection with a manufactured home loan;

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

(4) unreasonably delay the processing of a manufactured home loan application, or, if applicable, the closing of a manufactured home loan. For purposes of this clause, evidence of unreasonable delay includes but is not limited to those factors identified in section 47.206, subdivision 7, clause (d);

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

(6) fail to perform in conformance with its written agreements with borrowers, investors, other licensees, or other parties;

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

(8) violate any provision of any other state or federal law applicable to a person making manufactured home loans;

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

(10) compensate, whether directly or indirectly, coerce, or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of personal property that is to be covered by a manufactured home loan or is being offered as security according to an application for a manufactured home loan;

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

(12) make or assist in making any manufactured home loan without verifying the reasonable ability of the borrower to repay the loan, taking into consideration taxes and insurance in connection with the manufactured home. For loans in which the interest rate may vary, the reasonable ability to pay shall be determined based on a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan;

(13) 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 manufactured home lender that it is in compliance with the applicable licensing requirements;

(14) claim to represent a broker or lender, unless the person is an employee of the broker or lender, or unless the person has entered into a written agency agreement with the broker or lender;

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

(16) make, provide, or arrange for a manufactured home loan for a higher interest rate or on less favorable terms than the rate or terms for which the borrower qualifies based on criteria typically used by that lender to evaluate rate and term offerings;

(17) 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 manufactured home loans that is false, deceptive, or misleading;

(18) advertise loan types or terms that are not available from or through the broker or lender 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 loan terms,

including interest rates, discount, points, and closing costs provided by brokers or lenders to a print or electronic medium that presents the information to the public;

(19) use or employ phrases, pictures, return addresses, geographic designations, or other means that create the impression, directly or indirectly, that a broker or lender 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;

(20) make, provide, or arrange for a manufactured home loan all or a portion of the proceeds of which are used to fully or partially pay off a "special loan" 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 the purposes of this section, "special loan" means a loan for the purchase, refinance, improvement, or repair of the manufactured home 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 the purposes of this section, "authorized independent loan counselor" means a nonprofit, third-party individual or organization providing homebuyer education programs, foreclosure prevention services, 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;

(21) engage in churning; and

(22) make, provide, or arrange for a manufactured home loan if the borrower's compliance with any repayment option offered pursuant to the terms of the loan will result in negative amortization during any six-month period.

(b) This subdivision shall not apply to a state or federally chartered bank, savings bank, or credit union, an institution chartered by Congress under the Farm Credit Act, or to a person making, providing, or arranging a manufactured home loan originated or purchased by a state agency or a tribal or local unit of government.

Sec. 20. Minnesota Statutes 2006, section 327B.12, is amended to read:

327B.12 ADDITIONAL REMEDIES AND ENFORCEMENT.

Subdivision 1. **Private remedies.** (a) Any person injured or threatened with injury by a dealer or manufacturer's violation of sections 327B.01 to 327B.12 may bring a private action in any court of competent jurisdiction.

(b) A borrower injured by a violation of the standards, duties, prohibitions, or requirements of sections 327B.08, subdivision 6; 325B.09, subdivision 6; or 325B.095 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 manufactured home loan as defined in section 325B.095, subdivision 1;

(3) punitive damages if appropriate, and as provided in sections 549.191 and 549.20; and

(4) court costs and reasonable attorney fees.

Subd. 2. **Fraud remedies.** In addition to the remedies provided in sections 327B.01 to 327B.12, any violation of section 327B.08 or 327B.09 is a violation of section 325F.69, subdivision 1 and the provisions of section 8.31 shall apply. 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.