

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 2598

4
5 By: Representatives Ledbetter, C. Johnson
6
7

For An Act To Be Entitled

8
9 AN ACT TO PROHIBIT PREDATORY LENDING IN THE HOME
10 MORTGAGE MARKET; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT TO PROHIBIT PREDATORY LENDING IN
14 THE HOME MORTGAGE MARKET.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. This act shall be known as the "Arkansas Home Loan
20 Protection Act".
21

22 SECTION 2. (a) The General Assembly finds that:

23 (1) Abusive mortgage lending has become an increasing problem in
24 this state, exacerbating the loss of equity in homes and causing the number
25 of foreclosures to increase in recent years.

26 (2) One of the most common forms of abusive lending is the
27 making of loans that are equity based, rather than income based;

28 (3) The financing of points and fees in the loans provides
29 immediate income to the originator and encourages lenders to repeatedly
30 refinance home loans;

31 (4) The lender's ability to sell loans reduces the incentive to
32 ensure that the homeowner can afford the payments of the loan;

33 (5) As long as there is sufficient equity in the home, an
34 abusive lender benefits even if the borrower is unable to make the payments
35 and is forced to refinance;

36 (6) The financing of high points and fees causes the loss of



1 precious equity in each refinancing and often leads to foreclosure;

2 (7) Abusive lending has threatened the viability of many
 3 communities and caused decreases in homeownership;

4 (8) While the marketplace appears to operate effectively for
 5 conventional mortgages, too many homeowners find themselves victims of
 6 overreaching lenders who provide loans with unnecessarily high costs and
 7 terms that are unnecessary to secure repayment of the loan; and

8 (9) As competition and self regulation have not eliminated the
 9 abusive terms from home secured loans, the consumer protection provisions of
 10 this act are necessary to encourage lending at reasonable rates with
 11 reasonable terms.

12 (b) This act shall be liberally construed to:

13 (1) Effectuate its purpose of protecting the homes and the
 14 equity of individual borrowers; and

15 (2) As a consumer protection statute for all purposes.

16
 17 SECTION 2. Definitions.

18 As used in this act:

19 (1) "Affiliate" means any company that controls, is controlled
 20 by, or is under common control with another company, as set forth in the Bank
 21 Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as of the effective
 22 date of this act;

23 (2) "Annual percentage rate" means the annual percentage rate
 24 for the loan calculated according to the provisions of the federal Truth-in-
 25 Lending Act, 15 U.S.C. § 1601, et seq., as it existed on March 1, 2003, and
 26 the regulations promulgated thereunder by the Federal Reserve Board;

27 (3) "Bona fide loan discount points" means loan discount points
 28 knowingly paid by the borrower for the purpose of reducing, and which in fact
 29 result in a bona fide reduction of the interest rate or time price
 30 differential applicable to the loan, provided the amount of the interest rate
 31 reduction purchased by the discount points is reasonably consistent with
 32 established industry norms and practices for secondary mortgage market
 33 transactions;

34 (4) "Creditor" means any person or entity who participates in
 35 the original making or approving of a high cost home loan; and

36 (5)(A) "High cost home loan" means a loan, including an open end

1 credit plan, but other than a reverse mortgage transaction, bridge or
2 construction loan, or a loan made for the purchase of a one (1) to four (4)
3 family residential structure that is secured by a first lien on the
4 structure, in which:

5 (i) The total loan amount does not exceed one
6 hundred fifty thousand dollars (\$150,000);

7 (ii) The borrower is a natural person;

8 (iii) The debt is incurred by the borrower primarily
9 for personal, family, or household purposes;

10 (iv) The loan is secured by a mortgage or deed of
11 trust on real estate upon which there is located a structure or structures
12 designed principally for the occupancy of from one (1) to four (4) families
13 which is or will be occupied by the borrower as the borrower's principal
14 dwelling; and

15 (v) The terms of the loan meet or exceed one or more
16 of the thresholds as defined in subsection (7) of this section;

17 (B) "High cost home loan" does not include any loan that
18 is insured by, securitized for, or sold to a government agency or government
19 sponsored enterprise, including the Department of Housing and Urban
20 Development, the Department of Veterans Affairs, Federal Home Loan Mortgage
21 Corp., Federal National Mortgage Association, the Arkansas Development
22 Finance Authority, and the United States Department of Agriculture.

23
24
25
26
27
28
29
30
31
32
33
34
35
36