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House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

SENATE BILL 1353

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO COVERED LOANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 6, Arizona Revised Statutes, is amended by adding
3 chapter 16, to read:

4 CHAPTER 16

5 COVERED LOANS

6 ARTICLE 1. GENERAL PROVISIONS

7 6-1601. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "COVERED LOAN" MEANS A CONSUMER CREDIT MORTGAGE LOAN TRANSACTION
10 THAT INVOLVES PROPERTY LOCATED IN THIS STATE AND THAT IS CONSIDERED A
11 MORTGAGE UNDER THE TRUTH IN LENDING ACT (P.L. 90-321; 82 STAT. 146; 15 UNITED
12 STATES CODE SECTION 1602 (aa)), AND REGULATIONS ADOPTED BY THE FEDERAL
13 RESERVE BOARD, THAT IS SUBJECT TO THE REQUIREMENTS FOR CERTAIN CLOSED-END
14 HOME MORTGAGES (12 CODE OF FEDERAL REGULATIONS SECTION 226.32).

15 2. "GROSS INCOME" MEANS AN OBLIGOR'S GROSS INCOME AS SET FORTH ON A
16 CREDIT APPLICATION, THE OBLIGOR'S FINANCIAL STATEMENT OR A CREDIT REPORT, AS
17 SET FORTH IN FINANCIAL INFORMATION PROVIDED TO THE LENDER BY OR ON BEHALF OF
18 THE OBLIGOR OR AS DETERMINED BY ANY OTHER REASONABLE MEANS BY A LENDER.

19 3. "LENDER" MEANS ANY PERSON REGULATED BY THIS TITLE WHO IN ANY TWELVE
20 MONTH PERIOD ORIGINATES AT LEAST ONE COVERED LOAN. LENDER DOES NOT INCLUDE A
21 POLITICAL SUBDIVISION OF THIS STATE.

22 4. "MORTGAGE BROKER" MEANS A PERSON WHO IS NOT EXEMPT UNDER SECTION
23 6-902 AND WHO FOR COMPENSATION OR IN THE EXPECTATION OF COMPENSATION EITHER
24 DIRECTLY OR INDIRECTLY MAKES, NEGOTIATES OR OFFERS TO MAKE OR NEGOTIATE A
25 MORTGAGE LOAN.

26 5. "OBLIGOR" MEANS EACH OBLIGOR, CO-OBLIGOR, COSIGNER OR GUARANTOR
27 OBLIGATED TO REPAY A COVERED LOAN.

28 6. "POLITICAL SUBDIVISION" MEANS A CITY, TOWN, COUNTY, SCHOOL DISTRICT
29 OR JOINT TECHNOLOGICAL EDUCATION DISTRICT.

30 7. "PRINCIPAL BALANCE" MEANS THE AMOUNT OF A PROMISSORY NOTE SECURED
31 BY A MORTGAGE IN A MORTGAGE TRANSACTION.

32 6-1602. Political subdivisions; prohibitions; applicability

33 BEGINNING ON JANUARY 1, 2003, A POLITICAL SUBDIVISION OF THIS STATE
34 SHALL NOT ENACT OR ENFORCE AN ORDINANCE, RESOLUTION OR RULE RELATING TO THE
35 LENDING ACTIVITIES OF A PERSON WHO IS GOVERNED BY THIS TITLE.

36 ARTICLE 2. LIMITATIONS

37 6-1621. Balloon payments

38 EXCEPT AS PROVIDED IN SECTIONS 6-114 AND 6-637, A COVERED LOAN SHALL
39 NOT PROVIDE FOR A SCHEDULED PAYMENT OF PRINCIPAL AND INTEREST THAT IS MORE
40 THAN TWICE AS LARGE AS THE AVERAGE OF EARLIER SCHEDULED MONTHLY PAYMENTS OF
41 THE LOAN PRECEDING THE COVERED LOAN UNLESS THE BALLOON PAYMENT BECOMES DUE
42 AND PAYABLE AT LEAST ONE HUNDRED TWENTY MONTHS AFTER THE DATE OF DISBURSEMENT
43 OF THE LOAN. THIS SECTION DOES NOT APPLY WHEN THE PAYMENT SCHEDULE IS
44 ADJUSTED TO ACCOUNT FOR THE SEASONAL OR IRREGULAR INCOME OF THE OBLIGOR.

1 6-1622. Call provisions; prohibition
2 A. A COVERED LOAN SHALL NOT CONTAIN A CALL PROVISION THAT PERMITS THE
3 LENDER, IN ITS SOLE DISCRETION, TO ACCELERATE THE INDEBTEDNESS.
4 B. THIS SECTION DOES NOT APPLY IF REPAYMENT OF THE LOAN IS ACCELERATED
5 BECAUSE OF ANY OF THE FOLLOWING:
6 1. A DEFAULT.
7 2. A DUE ON SALE PROVISION.
8 3. A FRAUD OR MATERIAL MISREPRESENTATION BY AN OBLIGOR IN CONNECTION
9 WITH THE LOAN.
10 4. ANY ACTION OR INACTION BY THE OBLIGOR THAT ADVERSELY AFFECTS THE
11 LENDER'S SECURITY FOR THE LOAN OR ANY RIGHTS OF THE LENDER IN THE SECURITY.
12 6-1623. Negative amortization; prohibition
13 A COVERED LOAN SHALL NOT PROVIDE FOR A PAYMENT SCHEDULE WITH REGULAR
14 PERIODIC PAYMENTS THAT CAUSE THE PRINCIPAL BALANCE OF THE LOAN TO INCREASE.
15 THIS SECTION DOES NOT PROHIBIT NEGATIVE AMORTIZATION AS A CONSEQUENCE OF A
16 TEMPORARY FORBEARANCE OR RESTRUCTURE CONSENTED TO BY THE OBLIGOR.
17 6-1624. Increased interest rate; default; prohibition;
18 applicability
19 A COVERED LOAN SHALL NOT PROVIDE FOR ANY INCREASE IN THE INTEREST RATE
20 AS A RESULT OF A DEFAULT. THIS SECTION DOES NOT APPLY TO PERIODIC INTEREST
21 RATE CHANGES IN A VARIABLE RATE LOAN OTHERWISE CONSISTENT WITH THE PROVISIONS
22 OF THE LOAN AGREEMENT IF THE CHANGE IN THE INTEREST RATE IS NOT OCCASIONED BY
23 THE EVENT OF DEFAULT OR PERMISSIBLE ACCELERATION OF THE INDEBTEDNESS.
24 6-1625. Advance payments; prohibition
25 A COVERED LOAN SHALL NOT INCLUDE TERMS UNDER WHICH ANY PERIODIC
26 PAYMENTS REQUIRED UNDER THE LOAN ARE PAID IN ADVANCE FROM THE LOAN PROCEEDS.
27 6-1626. Prepayment fee limitations; applicability
28 A. A PREPAYMENT FEE OR PENALTY IS PERMITTED ONLY DURING THE FIRST
29 THIRTY-SIX MONTHS AFTER THE DATE OF EXECUTION OF A COVERED LOAN.
30 B. A LENDER SHALL NOT INCLUDE A PREPAYMENT FEE OR PENALTY IN A COVERED
31 LOAN UNLESS IT ALSO MAKES AVAILABLE A LOAN PRODUCT WITHOUT A PREPAYMENT FEE.
32 C. A PREPAYMENT FEE OR PENALTY SHALL NOT BE CHARGED ON A REFINANCING
33 OF A COVERED LOAN WITH A COVERED LOAN IF THE COVERED LOAN BEING REFINANCED IS
34 OWNED BY THE REFINANCING LENDER AT THE TIME OF THE REFINANCING. THIS
35 SUBSECTION DOES NOT APPLY TO THE SERVICER OF THE LOAN UNLESS THE SERVICER IS
36 ALSO THE OWNER.
37 D. THIS SECTION DOES NOT APPLY TO CONSTRUCTION LOANS. FOR THE
38 PURPOSES OF THIS SUBSECTION, "CONSTRUCTION LOAN" MEANS A SHORT-TERM LOAN, NOT
39 TO EXCEED EIGHTEEN MONTHS, FOR THE SOLE PURPOSE OF BUILDING A RESIDENTIAL
40 DWELLING WHERE PROGRESS PAYMENTS ARE MADE AS CONSTRUCTION PROGRESSES.
41 6-1627. Inconvenient forum
42 A COVERED LOAN SHALL NOT BE SUBJECT TO A PROVISION THAT ALLOWS A PARTY
43 TO REQUIRE A BORROWER TO ASSERT ANY CLAIM OR DEFENSE IN A FORUM THAT IS LESS
44 CONVENIENT FOR THE RESOLUTION OF A DISPUTE THAN A JUDICIAL FORUM IN THIS
45 STATE WHERE A BORROWER MAY OTHERWISE PROPERLY BRING CLAIM OR DEFENSE.

ARTICLE 3. RESTRICTED ACTS AND PRACTICES

6-1641. Lending; disclosure

A LENDER SHALL NOT MAKE A COVERED LOAN UNLESS THE LENDER OR A PARTY AUTHORIZED BY THE LENDER HAS GIVEN THE FOLLOWING DISCLOSURE IN WRITING TO THE OBLIGOR AT LEAST ONCE AND NOT LATER THAN THREE BUSINESS DAYS BEFORE CONSUMMATION OF A MORTGAGE TRANSACTION COVERED BY THIS CHAPTER:

DISCLOSURE TO BORROWER

IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE, DEED OF TRUST OR LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE RATIO REQUESTED AND THE TYPE OF REAL PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT. AS AN OBLIGOR, YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROVIDES A LIST OF CERTIFIED COUNSELORS WHICH YOU CAN ACCESS BY CALLING (INSERT TELEPHONE NUMBER) OR ON THEIR WEB SITE AT (INSERT WEB SITE). YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE IMPOUND SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES. ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS.

6-1642. Repayment ability; monthly gross income

A. A LENDER SHALL NOT MAKE A COVERED LOAN BASED ON THE CONSUMER'S COLLATERAL WITHOUT REGARD TO THE CONSUMER'S REPAYMENT ABILITY, INCLUDING THE CONSUMER'S CURRENT AND SEASONAL INCOME THAT IS SUPPORTED BY HISTORICAL EXPERIENCE, EXPECTED INCOME, CURRENT OBLIGATIONS AS DISCLOSED TO THE LENDER BY THE LOAN APPLICATION AND THE CONSUMER'S CREDIT REPORT, EMPLOYMENT STATUS AND OTHER FINANCIAL RESOURCES OTHER THAN THE OBLIGOR'S EQUITY IN THE DWELLING THAT SECURES REPAYMENT OF THE LOAN. A LENDER MAY RELY ON INCOME VERIFICATION PROVIDED BY THE CONSUMER.

B. AN OBLIGOR IS PRESUMED TO BE ABLE TO MAKE THE SCHEDULED PAYMENTS TO REPAY AN OBLIGATION IF, AT THE TIME THE COVERED LOAN IS CONSUMMATED, THE OBLIGOR'S SCHEDULED MONTHLY PAYMENTS, AS DISCLOSED TO THE LENDER BY THE LOAN APPLICATION AND THE CONSUMER'S CREDIT REPORT, DO NOT EXCEED FIFTY PER CENT OF

1 THE OBLIGOR'S MONTHLY GROSS INCOME. FOR THE PURPOSES OF DETERMINING INCOME,
2 THE INCOME OF ALL OBLIGORS SHALL BE CONSIDERED.

3 6-1643. Refinancing loans

4 A. A LENDER SHALL NOT CHARGE ANY POINTS IN CONNECTION WITH A COVERED
5 LOAN IF THE PROCEEDS OF THE COVERED LOAN ARE USED TO REFINANCE AN EXISTING
6 COVERED LOAN HELD BY THE LENDER AND THE LOAN BEING REFINANCED WAS OBTAINED
7 WITHIN ONE YEAR OF THE CURRENT REFINANCING.

8 B. THIS SECTION DOES NOT PROHIBIT A LENDER FROM CHARGING POINTS IN
9 CONNECTION WITH ANY ADDITIONAL PROCEEDS PAID TO OR FOR THE ACCOUNT OF THE
10 OBLIGOR, OTHER THAN CHARGES OR COSTS ATTRIBUTABLE TO THE COVERED LOAN IN
11 CONNECTION WITH THE REFINANCING. FOR THE PURPOSES OF THIS SUBSECTION,
12 "ADDITIONAL PROCEEDS" MEANS THE AMOUNT OVER AND ABOVE THE CURRENT PRINCIPAL
13 BALANCE OF THE EXISTING COVERED LOAN. IF THE LENDER REFUNDS ALL THE POINTS
14 ON THE COVERED LOAN BEING REFINANCED, THE ADDITIONAL PROCEEDS SHALL BE THE
15 PRINCIPAL BALANCE OF THE NEW COVERED LOAN.

16 6-1644. Home improvement contracts

17 A LENDER SHALL NOT PAY A CONTRACTOR UNDER A HOME IMPROVEMENT CONTRACT
18 FROM THE PROCEEDS OF A COVERED LOAN OTHER THAN BY AN INSTRUMENT PAYABLE TO
19 THE OBLIGOR OR JOINTLY TO THE OBLIGOR AND THE CONTRACTOR OR, AT THE ELECTION
20 OF THE OBLIGOR, THROUGH A THIRD-PARTY ESCROW AGENT IN ACCORDANCE WITH TERMS
21 ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY THE OBLIGOR, THE LENDER AND THE
22 CONTRACTOR BEFORE THE DISBURSEMENT OF MONIES TO THE CONTRACTOR.

23 6-1645. Single premium credit insurance; prohibition

24 A LENDER SHALL NOT SELL ANY INDIVIDUAL OR GROUP CREDIT LIFE, CREDIT
25 ACCIDENT AND HEALTH OR CREDIT UNEMPLOYMENT INSURANCE PRODUCT ON A PREPAID
26 SINGLE PREMIUM BASIS IN CONJUNCTION WITH A COVERED LOAN.

27 ARTICLE 4. ENFORCEMENT

28 6-1661. Nonlicensed mortgage brokers and bankers; prohibition

29 A LENDER SHALL NOT PAY COMPENSATION TO, CONTRACT WITH OR EMPLOY AS AN
30 INDEPENDENT CONTRACTOR A PERSON WHO IS ACTING AS A MORTGAGE BROKER OR
31 MORTGAGE BANKER BUT WHO IS NOT LICENSED UNDER CHAPTER 9 OF THIS TITLE.

32 6-1662. Enforcement

33 A. THE DEPARTMENT MAY CONDUCT EXAMINATIONS AND INVESTIGATIONS AND
34 ISSUE SUBPOENAS AND ORDERS TO ENFORCE THIS CHAPTER AS PROVIDED BY THIS TITLE.

35 B. THIS CHAPTER SHALL NOT BE INTERPRETED TO LIMIT THE AUTHORITY OF THE
36 OFFICE OF THE ATTORNEY GENERAL TO ENFORCE THE CONSUMER FRAUD ACT.

37 6-1663. Examinations and reports

38 THE DEPARTMENT MAY EXAMINE ANY INSTRUMENT, DOCUMENT, ACCOUNT, BOOK,
39 RECORD OR FILE OF A PERSON ORIGINATING OR BROKERING A COVERED LOAN UNDER THIS
40 CHAPTER. THE DEPARTMENT MAY RECOVER THE COST OF THE EXAMINATIONS FROM THE
41 PERSON. THE DEPARTMENT MAY REQUIRE THE SUBMISSION OF REPORTS BY PERSONS
42 ORIGINATING OR BROKERING COVERED LOANS. THE REPORTS SHALL INCLUDE
43 INFORMATION THE DEPARTMENT REQUIRES. A PERSON ORIGINATING OR BROKERING
44 COVERED LOANS SHALL MAINTAIN RECORDS:

1 1. IN A MANNER THAT WILL FACILITATE THE DEPARTMENT DETERMINING WHETHER
2 THE PERSON IS COMPLYING WITH THIS CHAPTER.

3 2. FOR FIVE YEARS OR UNTIL THE SUPERINTENDENT EXAMINES THE FINANCIAL
4 INSTITUTION PURSUANT TO SECTION 6-122, WHICHEVER IS LESS.

5 6-1664. Subpoenas

6 IF A PERSON FAILS TO COMPLY WITH A SUBPOENA FOR DOCUMENTS OR TESTIMONY
7 ISSUED BY THE DEPARTMENT, THE DEPARTMENT MAY REQUEST AN ORDER FROM THE
8 SUPERIOR COURT REQUIRING THE PERSON TO PRODUCE THE REQUESTED INFORMATION.

9 6-1665. Penalties

10 IF THE DEPARTMENT DETERMINES THAT A PERSON HAS VIOLATED THIS CHAPTER,
11 THE DEPARTMENT MAY DO ANY OF THE FOLLOWING:

12 1. SUSPEND, REVOKE OR REFUSE TO RENEW ANY LICENSE ISSUED BY THE
13 DEPARTMENT.

14 2. PROHIBIT OR PERMANENTLY REMOVE AN INDIVIDUAL RESPONSIBLE FOR A
15 VIOLATION OF THIS CHAPTER FROM WORKING IN THE PERSON'S PRESENT CAPACITY OR IN
16 ANY OTHER CAPACITY RELATED TO ACTIVITIES REGULATED BY THE DEPARTMENT.

17 3. ORDER A PERSON TO MAKE RESTITUTION FOR ACTUAL DAMAGES TO OBLIGORS.

18 4. IMPOSE OTHER CONDITIONS THAT THE DEPARTMENT DEEMS APPROPRIATE.

19 6-1666. Civil action; damages; remedies

20 A. IF A LENDER KNOWINGLY ENGAGES IN A PATTERN OR PRACTICE OF
21 MATERIALLY VIOLATING THIS CHAPTER, AN OBLIGOR ON A COVERED LOAN MAY INITIATE
22 A CIVIL ACTION TO RECOVER DAMAGES.

23 B. THE REMEDIES PROVIDED IN THIS CHAPTER AND IN CHAPTER 1 OF THIS
24 TITLE SHALL BE THE ONLY REMEDIES FOR ANY VIOLATION OF THIS CHAPTER.

25 6-1667. Liability

26 PERSONS ENGAGED IN THE PURCHASE, SALE, ASSIGNMENT, SECURITIZATION OR
27 SERVICING OF COVERED LOANS SHALL NOT BE HELD LIABLE FOR THE ACTIONS OR
28 INACTIONS OF PERSONS ORIGINATING THE LOANS.

29 6-1668. Rule making

30 THE DEPARTMENT MAY ADOPT RULES TO ENFORCE THIS CHAPTER.

31 Sec. 2. Study committee on the practice and effects on
32 predatory lending in Arizona

33 A. The study committee on predatory lending is established consisting
34 of the following members:

35 1. Three members of the house of representatives, no more than two of
36 which shall be from the same political party, shall be appointed by the
37 speaker of the house of representatives.

38 2. Three members of the senate, no more than two of which shall be
39 from the same political party, shall be appointed by the president of the
40 senate.

41 3. The governor or the governor's designee.

42 4. The attorney general or the attorney general's designee.

43 5. The superintendent of banking or the superintendent of banking's
44 designee.

- 1 B. The committee shall:
- 2 1. Examine the practice and effects on predatory lending in Arizona.
- 3 2. Submit a written report regarding the committee's activities and
- 4 recommendations on or before December 15, 2005 to the governor, the president
- 5 of the senate, the speaker of the house of representatives and provide a copy
- 6 of this report to the secretary of state and the director of the Arizona
- 7 state library, archives and public records.
- 8 3. Members of the committee are not eligible to receive compensation
- 9 or reimbursement of expenses.
- 10 Sec. 3. Effective date
- 11 This act is effective from and after December 31, 2003.