

1 AMENDMENT TO HOUSE BILL 0047

2 AMENDMENT NO. _____. Amend House Bill 0047 by replacing
3 the title with the following:

4 "AN ACT to create the Predatory Home Loan Practices
5 Act."; and

6 by replacing everything after the enacting clause with the
7 following:

8 "Section 1. Short title. This Act may be cited as the
9 Predatory Home Loan Practices Act.

10 Section 5. Definitions. As used in this Act:

11 "Affiliate" means any company that controls, is
12 controlled by, or is under common control with another
13 company, as determined under the Federal Bank Holding Company
14 Act of 1956 (12 U.S.C. 1841 et seq.).

15 "Annual percentage rate" means the annual percentage rate
16 for the loan calculated according to the provisions of the
17 federal Truth-in-Lending Act (15 U.S.C. 1601, et seq.) and
18 the regulations promulgated thereunder by the Federal Reserve
19 Board.

20 "Bona fide loan discount points" means loan discount
21 points knowingly paid by the borrower for the purpose of

1 reducing, and which in fact result in a bona fide reduction
2 of, the interest rate or time-price differential applicable
3 to the loan, provided the amount of the interest rate
4 reduction purchased by the discount points is reasonably
5 consistent with established industry norms and practices for
6 secondary mortgage market transactions.

7 "High-cost home loan" means a home loan for which the
8 annual percentage rate of the home loan at consummation will
9 exceed by more than 6 percentage points the weekly average
10 yield on United States Treasury securities adjusted to a
11 constant maturity of one year (as made available by the
12 Federal Reserve Board) as of the week immediately preceding
13 the week in which the interest rate for the loan is
14 established.

15 "Home loan" means a loan, other than an open-end credit
16 plan or a reverse mortgage transaction, in which: (i) the
17 principal amount of the loan does not exceed the conforming
18 loan size limit for a single-family dwelling as established
19 from time to time by the Federal National Mortgage
20 Association, (ii) the borrower is a natural person, (iii) the
21 debt is incurred by the borrower primarily for personal,
22 family, or household purposes, and (iv) the loan is secured
23 by a mortgage or deed of trust on real estate upon which
24 there is located or there is to be located a structure or
25 structures, designed principally for occupancy of from one to
26 4 families, that is or will be occupied by the borrower as
27 the borrower's principal dwelling.

28 "Points and fees" means:

29 (1) all items required to be disclosed under
30 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of
31 Federal Regulations, as amended from time to time, except
32 interest or the time-price differential;

33 (2) all charges for items listed under Section
34 226.4(c)(7) of Title 12 of the Code of Federal

1 Regulations, but only if the lender receives direct or
2 indirect compensation in connection with the charge or
3 the charge is paid to an affiliate of the lender;
4 otherwise, the charges are not included within the
5 meaning of the phrase "points and fees";

6 (3) all compensation paid directly or indirectly to
7 a mortgage broker, including a broker that originates a
8 loan in its own name in a tablefunded transaction, not
9 otherwise included under item 1 or 2;

10 (4) "Points and fees" does not include (i) taxes,
11 filing fees, recording, and other charges and fees paid
12 or to be paid to public officials for determining the
13 existence of or for perfecting, releasing, or satisfying
14 a security interest and (ii) bona fide and reasonable
15 fees paid to a person other than a lender or an affiliate
16 of the lender or to the mortgage broker or an affiliate
17 of the mortgage broker for any of the following: fees for
18 flood certification; fees for pest infestation and flood
19 determinations; appraisal fees; fees for home inspections
20 performed prior to closing; credit reports; surveys;
21 attorneys' fees (if the borrower has the right to select
22 the attorney from an approved list or otherwise); notary
23 fees; escrow charges, so long as not otherwise included
24 under item (1); title insurance premiums; and fire
25 insurance and flood insurance premiums, provided that the
26 conditions in Section 226.4(d)(2) of Title 12 of the Code
27 of Federal Regulations are met.

28 "Total loan amount" means the same as the term "total
29 loan amount" as used in Section 226.32 of Title 12 of the
30 Code of Federal Regulations, and shall be calculated in
31 accordance with the Federal Reserve Board's Official Staff
32 Commentary to that provision.

33 Section 10. Prohibited acts and practices regarding home

1 loans.

2 (a) No prepayment fees or penalties shall be contracted
3 by the borrower and lender with respect to any home loan.

4 (b) It shall be unlawful for any lender in a home loan
5 to finance, directly or indirectly, any credit life, credit
6 disability, or credit unemployment insurance, or any other
7 life or health insurance premiums, however, insurance
8 premiums calculated and paid on a monthly basis shall not be
9 considered to be financed by the lender.

10 (c) No lender may knowingly or intentionally engage in
11 the unfair act or practice of "flipping" a consumer home
12 loan. "Flipping" a loan is the making of a home loan to a
13 borrower that refinances an existing home loan when the new
14 loan does not have reasonable, tangible net benefit to the
15 borrower considering all of the circumstances, including the
16 terms of both the new and refinanced loans, the cost of the
17 new loan, and the borrower's circumstances. This provision
18 shall apply regardless of whether the loan is a high-cost
19 home loan.

20 (d) When there is a charge in addition to the stated
21 rate of interest payable directly or indirectly by the
22 borrower and imposed directly or indirectly by the lender as
23 consideration for the loan, whether paid by the borrower or
24 the seller to a third party in connection with the loan, the
25 charge may not exceed 3% of the total loan amount.

26 (e) No lender shall recommend or encourage default on an
27 existing loan or other debt prior to and in connection with
28 the closing or planned closing of a consumer home loan that
29 refinances all or any portion of the existing loan or debt.

30 (f) As used in this Section, the term "obligor" refers
31 to each borrower, co-borrower, cosigner, or guarantor
32 obligated to repay a loan. A lender may not make a home loan
33 unless the lender reasonably believes at the time the loan is
34 consummated that one or more of the obligors, when considered

1 individually or collectively, will be able to make the
2 scheduled payments to repay the obligation based upon a
3 consideration of their current and expected income, current
4 obligations, employment status, and other financial resources
5 (other than the borrower's equity in the dwelling which
6 secures repayment of the loan). An obligor shall be presumed
7 to be able to make the scheduled payments to repay the
8 obligation if, at the time the loan is consummated, the
9 obligor's total monthly debts, including amounts owed under
10 the loan, do not exceed 45% of the obligor's monthly gross
11 income as verified by the credit application, the obligor's
12 financial statement, a credit report, financial information
13 provided to the lender by or on behalf of the obligor, or any
14 other reasonable means.

15 Section 15. Limitations and prohibited practices for
16 high-cost home loans.

17 (a) A high-cost home loan is subject to the following
18 limitations and prohibited practices:

19 (1) No call provision. No high-cost home loan may
20 contain a provision that permits the lender, in its sole
21 discretion, to accelerate the indebtedness. This
22 provision does not apply when repayment of the loan has
23 been accelerated by default, pursuant to a due-on-sale
24 provision, or pursuant to some other provision of the
25 loan documents unrelated to the payment schedule.

26 (2) No balloon payment. No high-cost home loan may
27 contain a scheduled payment that is more than twice as
28 large as the average of earlier scheduled payments. This
29 provision does not apply when the payment schedule is
30 adjusted to the seasonal or irregular income of the
31 borrower.

32 (3) No negative amortization. No high-cost home
33 loan may contain a payment schedule with regular periodic

1 payments that cause the principal balance to increase.

2 (4) No increased interest rate. No high-cost home
3 loan may contain a provision that increases the interest
4 rate after default. This provision does not apply to
5 interest rate changes in a variable rate loan otherwise
6 consistent with the provisions of the loan documents,
7 provided the change in the interest rate is not triggered
8 by the event of default or the acceleration of the
9 indebtedness.

10 (5) No advance payments. No high cost home loan
11 may include terms under which more than 2 periodic
12 payments required under the loan are consolidated and
13 paid in advance from the loan proceeds provided to the
14 borrower.

15 (6) No modification or deferral fees. A lender may
16 not charge a borrower any fees or other charges to
17 modify, renew, extend, or amend a high-cost home loan or
18 to defer any payment due under the terms of a high cost
19 home loan.

20 (7) No mandatory arbitration clause. No high cost
21 loan may be subject to a mandatory arbitration clause
22 that limits in any way the right of the borrower to seek
23 relief through the judicial process.

24 (8) No lending without home-ownership counseling or
25 advice from an attorney. A lender may not make a
26 high-cost home loan without first receiving certification
27 from a counselor approved by the United States Department
28 of Housing and Urban Development, a state housing
29 financing agency, or the National Credit Union
30 Administration that the borrower has received counseling
31 on the advisability of the loan transaction and the
32 appropriate loan for the borrower.

33 (9) No lending without attorney representation. A
34 lender may not make a high cost home loan unless the

1 borrower is represented by an attorney at the closing.
2 The attorney shall represent the borrower's interests at
3 the closing and may be paid from the proceeds of the
4 loan.

5 (10) No benefit from refinancing existing high-cost
6 home loan with new high-cost home loan. A lender may not
7 charge a borrower points, fees, or other charges in
8 connection with a high-cost home loan if the proceeds of
9 the high-cost home loan are used to refinance an existing
10 high-cost home loan unless the annual percentage rate on
11 the new loan is at least 200 basis points below the
12 contract rate on the existing loan.

13 (11) Restrictions on home-improvement contracts. A
14 lender may not pay a contractor under a home-improvement
15 contract from the proceeds of a high-cost home loan other
16 than (i) by an instrument payable to the borrower or (ii)
17 at the election of the borrower, through a third-party
18 escrow agent in accordance with terms established in a
19 written agreement signed by the borrower, the lender, and
20 the contractor prior to the disbursement.

21 (b) The provisions of this Section apply to any person
22 who in bad faith attempts to avoid the application of this
23 Section by (i) the structuring of a loan transaction as an
24 open-end credit plan for the purpose and with the intent of
25 evading the provisions of this Section when the loan would
26 have been a high-cost home loan if the loan had been
27 structured as a closed-end loan, (ii) dividing any loan
28 transaction into separate parts for the purpose and with the
29 intent of evading the provisions of this Section, or (iii)
30 any other subterfuge.

31 (c) Unfair and deceptive acts or practices. Except as
32 provided in subsection (d) of this Section, the making of a
33 home loan that violates any provisions of Sections 10 and 15
34 of this Act is hereby declared usurious in violation of the

1 provisions of this Act and unlawful as an unfair or deceptive
2 act or practice in or affecting commerce. The provisions of
3 this Section apply to any person who in bad faith attempts to
4 avoid the application of this Section by (i) the structuring
5 of a loan transaction as an open-end credit plan for the
6 purpose and with the intent of evading the provisions of this
7 Section when the loan would have been a high-cost home loan
8 if the loan had been structured as a closed-end loan, (ii)
9 dividing any loan transaction into separate parts for the
10 purpose and with the intent of evading the provisions of this
11 Section, or (iii) any other subterfuge. The Attorney General,
12 the Office of Banks and Real Estate, or any party to a
13 high-cost home loan may enforce the provisions of this
14 Section. Any person seeking damages or penalties under the
15 provisions of this Section may recover damages under either
16 this Act or other State law, but not both.

17 (d) Corrections and unintentional violations. A lender
18 in a high-cost home loan who, when acting in good faith,
19 fails to comply with subsection (a) of this Section, shall
20 not be deemed to have violated this Section if the lender
21 establishes that either: (1) Within 30 days after the loan
22 closing and prior to the institution of any action under this
23 Section, the borrower is notified of the compliance failure,
24 appropriate restitution is made, and whatever adjustments are
25 necessary are made to the loan to either, at the choice of
26 the borrower, (i) make the high-cost home loan satisfy the
27 requirements of subsection (a) of this Section or (ii) change
28 the terms of the loan in a manner beneficial to the borrower
29 so that the loan will no longer be considered a high-cost
30 home loan subject to the provisions of this Section; or (2)
31 the compliance failure was not intentional and resulted from
32 a bona fide error notwithstanding the maintenance of
33 procedures reasonably adapted to avoid errors and within 60
34 days after the discovery of the compliance failure and prior

1 to the institution of any action under this Section or the
2 receipt of written notice of the compliance failure, the
3 borrower is notified of the compliance failure, appropriate
4 restitution is made, and whatever adjustments are necessary
5 are made to the loan to either, at the choice of the
6 borrower, (i) make the high-cost home loan satisfy the
7 requirements of subsection (a) of this Section or (ii) change
8 the terms of the loan in a manner beneficial to the borrower
9 so that the loan will no longer be considered a high-cost
10 home loan subject to the provisions of this Section.

11 Section 20. Assignee liability. Any subsequent holder
12 who purchases or is otherwise assigned a mortgage referred to
13 in this Section shall be subject to all claims and defenses
14 with respect to that mortgage that the consumer could assert
15 against the original creditor of the mortgage.

16 Section 25. Damages. If any person, corporation, or
17 other lender knowingly violates either directly or indirectly
18 any of the provisions described in this Act, the borrower
19 may, recover by means of an action or defense, an amount
20 equal to twice the total of all interest, discount, and
21 charges determined by the loan contract or paid by the
22 borrower, whichever is greater, plus such reasonable
23 attorneys fees and court costs as may be assessed by a court
24 against the lender. Recovery by means of a defense may be had
25 at any time after the loan is transacted. Recovery by means
26 of an action may be had at any time within 2 years after the
27 date on which the total loan amount due under the terms of
28 the loan contract is fully paid.

29 Section 30. Enforcement. When the Office of Banks and
30 Real Estate determines that a violation of this Act has
31 occurred, after due process, it shall withdraw the license of

1 the violator.

2 Section 35. Applicability. This Act applies to all loans
3 made or entered into after the effective date of this Act.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law."