

FIRST REGULAR SESSION

SENATE BILL NO. 541

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PEARCE.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1365S.02I

AN ACT

To amend chapter 443, RSMo, by adding thereto five new sections relating to residential mortgage loans.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 443, RSMo, is amended by adding thereto five new sections, to be known as sections 443.1000, 443.1001, 443.1002, 443.1003, and 443.1004, to read as follows:

443.1000. Sections 443.1000 to 443.1005 shall be known as the "Missouri Homeowners' Protection Act". For the purposes of sections 443.1000 to 443.1005 the following terms and phrases shall mean:

(1) "Creditor", any person who regularly extends, whether in connection with loans, sales, property, services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required and is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. The term "creditor" shall also include any person who originates a residential mortgage loan on more than one occasion in a twelve-month period or any person who originates a residential mortgage loan through a mortgage broker;

(2) "Credit", the right granted by a creditor to a debtor to defer payment of a debt or to incur debt and defer its payment;

(3) "Consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for

21 **personal, family, or household purposes;**

22 **(4) "Flipping a residential mortgage loan", the making of a**
23 **residential mortgage loan to a borrower that refinances an existing**
24 **residential mortgage loan when the new loan does not have reasonable,**
25 **tangible net benefit to the borrower considering all of the**
26 **circumstances, including but not limited to, the terms of both the new**
27 **and refinanced loans, the cost of the new loan, and the borrower's**
28 **circumstances;**

29 **(5) "Fully indexed rate", the index rate prevailing at the time a**
30 **residential mortgage loan is originated, plus the margin that will apply**
31 **after the expiration of an introductory interest rate;**

32 **(6) "Mortgage broker", any person who acts as a mortgage broker**
33 **as defined in 24 C.F.R. 3500.2;**

34 **(7) "Prepayment penalty", a penalty for paying all or part of the**
35 **principal before the date on which the principal is due. A prepayment**
36 **penalty includes computing a refund of unearned interest by a method**
37 **that is less favorable to the borrower than the actuarial method;**

38 **(8) "Points and fees":**

39 **(a) Includes:**

40 **a. All items included in the definition of finance charge in 12**
41 **C.F.R. 226.4(a) and 12 C.F.R. 226.4(b), except interest or the time price**
42 **differential;**

43 **b. All items described in 12 C.F.R. 226.32(b)(1)(iii);**

44 **c. All compensation paid directly or indirectly to a mortgage**
45 **broker from any source, including a mortgage broker that originates a**
46 **loan in its own name in a table-funded transaction;**

47 **d. The cost of all premiums financed by the creditor, directly or**
48 **indirectly, for any credit life, credit disability, credit unemployment,**
49 **or credit property insurance, or any other life or health insurance, or**
50 **any payment financed by the creditor directly or indirectly for any**
51 **debt cancellation or suspension agreement or contract, except that**
52 **insurance premiums or debt cancellation or suspension fees calculated**
53 **and paid in full on a monthly basis shall not be considered financed by**
54 **the creditor;**

55 **e. All prepayment fees or penalties that are incurred by the**
56 **borrower if the loan refinances a previous loan originated or currently**
57 **held by the same creditor or an affiliate of the creditor;**

58 f. For open-end loans, the total points and fees known at or
59 before closing, plus the minimum additional fees the borrower would
60 be required to pay to draw down an amount equal to the total credit
61 line;

62 (b) Points and fees shall not include taxes, filing fees, recording
63 fees, other charges or fees paid or to be paid to public officials for
64 determining the existence of or for perfecting, releasing, or satisfying
65 a security interest, or bona fide and reasonable fees paid to a person
66 other than the creditor or an affiliate of the creditor for the following:

- 67 a. Fees for tax payment services;
68 b. Fees for flood certification;
69 c. Fees for pest infestation and flood determination;
70 d. Appraisal fees;
71 e. Fees for inspections performed prior to closing;
72 f. Fees for credit reports;
73 g. Fees for surveys;
74 h. Attorneys' fees, if the borrower has the right to select the
75 attorney from an approved list or otherwise;
76 i. Notary fees;
77 j. Escrow charges, so long as they are not otherwise included
78 under paragraph (a) of this subdivision;
79 k. Title insurance premiums; and
80 l. Fire, hazard, or flood insurance premiums, provided that the
81 conditions in 12 C.F.R. 226.4(d)(2) are met;

82 (9) "Residential mortgage loan", a loan made to a natural person
83 or persons primarily for personal, family, or household use, primarily
84 secured by a mortgage or deed of trust on real property located in
85 Missouri upon which there is located or is to be located one or more
86 single family dwellings or dwelling units;

87 (10) "Subprime residential mortgage loan", a residential mortgage
88 loan with an annual percentage rate that exceeds the average prime
89 offer rate for a comparable transaction as of the date the interest rate
90 is set by 1.5 or more percentage points for loans secured by a first lien
91 on a dwelling, or by 3.5 or more percentage points for loans secured by
92 a subordinate lien on a dwelling. For the purposes of this section,
93 "average prime offer rate" means an annual percentage rate that is
94 derived from average interest rates, points, and other loan pricing

95 terms currently offered to consumers by a representative sample of
96 creditors for mortgage transactions that have low-risk pricing
97 characteristics as published weekly by the Federal Reserve Board for
98 mortgages of a comparable type;

99 (11) "Total loan amount", the principal of the loan minus those
100 points and fees as defined in subdivision (8) of this section that are
101 included in the principal amount of the loan. For open-end loans, the
102 total loan amount shall be calculated using the total line of credit
103 allowed under the residential mortgage loan at closing.

443.1001. 1. No creditor shall knowingly or intentionally engage
2 in the act or practice of flipping a home loan.

3 2. No creditor shall make, provide, or arrange for a residential
4 mortgage loan without verifying the borrower's reasonable ability to
5 pay the scheduled payments of the following, as applicable:

6 (1) Principal;

7 (2) Interest;

8 (3) Real estate taxes;

9 (4) Homeowner's insurance;

10 (5) Assessments; and

11 (6) Mortgage insurance premiums.

12 For loans in which the interest rate may vary, the reasonable ability to
13 pay shall be determined based on a fully indexed rate and a repayment
14 schedule that achieves full amortization over the life of the loan. For
15 all residential mortgage loans, a creditor shall verify amounts of
16 income or assets that it relies on to determine repayment ability,
17 including expected income or assets, by examining the borrower's IRS
18 Form W-2, tax returns, payroll receipts, financial institution records,
19 or other third-party documents that provide reasonably reliable
20 evidence of the borrower's income or assets. A creditor shall not be in
21 violation of the obligation to verify repayment ability if the amounts of
22 income and assets relied upon in determining repayment ability are not
23 materially greater than the borrower's income or assets at the time the
24 loan was consummated. The creditor shall verify the consumer's
25 current obligations.

26 3. A creditor shall not enter into a subprime residential
27 mortgage loan that contains a prepayment penalty.

28 4. A creditor shall not make or cause to be made, directly or

29 indirectly, any false, deceptive, or misleading statement or
30 representation in connection with a residential mortgage loan.

31 5. A creditor shall not make, publish, disseminate, circulate,
32 place before the public, or cause to be made, directly or indirectly, any
33 advertisement or marketing materials of any type, or any statement or
34 representation relating to the business of residential mortgage loans
35 that is false, deceptive, or misleading.

36 6. A creditor shall not make, arrange, or provide for a residential
37 mortgage loan where the total points and fees payable by the consumer
38 exceed five percent of the total loan amount.

39 7. A creditor shall not make, arrange, or provide for a residential
40 mortgage loan that finances directly or indirectly:

41 (1) Credit life, credit disability, credit unemployment, or credit
42 property insurance, or any other life or health insurance premiums;

43 (2) Any debt cancellation or suspension agreement, contract, or
44 product; or

45 (3) Any product that is not necessary or related to the loan
46 closing such as an auto club membership or credit report monitoring.

443.1002. 1. A mortgage broker shall be considered to have
2 created a fiduciary relationship with the borrower in all cases, and in
3 addition to the duties imposed by otherwise applicable provisions of
4 state and federal law, comply with the following duties:

5 (1) Mortgage brokers shall act in the borrower's best interest and
6 in the utmost good faith, fidelity, and loyalty toward borrowers;

7 (2) Mortgage brokers shall carry out all lawful instructions given
8 by borrowers;

9 (3) Mortgage brokers shall clearly disclose to borrowers all
10 material facts of which the mortgage broker has knowledge which may
11 reasonably affect the borrower's rights, interests, or ability to receive
12 the borrower's intended benefit from the residential mortgage loan;

13 (4) Mortgage brokers shall use reasonable care in performing
14 duties; and

15 (5) Mortgage brokers shall account to the borrower for all money
16 and property received from the borrower or paid to the mortgage
17 broker on the borrower's behalf.

18 2. Nothing in this section shall require a mortgage broker to
19 obtain a loan containing terms or conditions unavailable to the

20 mortgage broker in the mortgage broker's usual course of business, or
21 to obtain a loan for the borrower from a mortgage lender with whom
22 the mortgage broker does not have a business relationship.

443.1003. Any person injured by a violation of the standards,
2 duties, prohibitions, or requirements imposed by sections 443.1000 to
3 443.1003 may bring a private civil action to recover:

- 4 (1) Actual and consequential damages sustained by the person;
- 5 (2) Damages equal to two times the amount of all lender and
6 broker fees included in the principal amount of the residential
7 mortgage loan;
- 8 (3) Punitive damages if the violation was malicious or reckless;
9 and
- 10 (4) Court costs and reasonable attorneys' fees.

11 The court may, in its discretion, provide such equitable relief as it
12 deems necessary or proper.

443.1004. Notwithstanding the provisions of section 443.1000,
2 nothing in sections 443.1000 to 443.1005 shall apply to a state or
3 federally chartered bank, savings bank, or credit union, and institution
4 chartered by Congress under the Farm Credit Act, or to a person
5 making, providing, or arranging a residential mortgage loan originated
6 or purchased by a state agency or local unit of government.

✓

Copy