

FORTY-SIXTH LEGISLATURE
FIRST SESSION

March 8, 2003

SENATE FLOOR AMENDMENT number ___1___ to SENATE JUDICIARY COMMITTEE
SUBSTITUTE FOR
SENATE BILL 449, as amended

Amendment sponsored by Senator Manny M Aragon

1. On page 2, between lines 12 and 13, insert the following new subsection to read:

"A. "affiliate" means a person that controls, is controlled by or is under common control with another person;".

2. Reletter the succeeding subsections accordingly.

3. On page 3, between lines 13 and 14, insert the following new subsection to read:

"F. "conventional prepayment penalty" means a prepayment penalty or fee that may be collected in a home loan and that is authorized by federal law; provided that a prepayment penalty is not a "conventional prepayment penalty" if the home loan:

(1) has an annual percentage rate that exceeds the conventional mortgage rate by more than two percent; or

(2) permits prepayment fees or penalties that exceed two percent of the amount prepaid;".

4. Reletter the succeeding subsections accordingly.

5. On page 3, line 14, after "who" insert "regularly".

6. On page 3, line 23, after the comma insert "where the principal amount does not exceed the conforming loan size limit for

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a single-family dwelling as established by the federal national mortgage association and".

7. On page 5, line 12, after the semicolon insert "and".
8. On page 5, line 14, strike "and" and insert in lieu thereof "but".
9. On page 5, line 15, after the paragraph designation "(d)" strike the remainder of the line, strike lines 16 and 17 and strike line 18 through "but".
10. On page 6, between lines 7 and 8, insert the following new paragraph to read:

"(2) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;".
11. Renumber the succeeding paragraphs accordingly.
12. On page 6, line 24, strike "Paragraph (1)" and insert in lieu thereof "Paragraphs (1) through (5)".
13. On page 7, line 15, after "the" insert "sum of the conventional prepayment penalties and the".
14. On page 7, line 16, strike "number of" and insert in lieu thereof "sum of the conventional prepayment penalties and the".
15. On page 7, line 18, strike "bona fide discount".
16. On page 8, line 22, after "shall" insert "knowingly and intentionally" and after "the" insert "unfair act or".
17. On page 9, lines 5 through 8, strike Subsection C in its

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entirety.

18. On page 10, lines 9 through 14, strike Subsection F in its entirety and insert in lieu thereof the following new Subsection F to read:

"F. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void."

19. On page 10, line 15, strike "No" and insert in lieu thereof "After April 1, 2004, no".

20. On page 10, line 16, after "a" insert "third-party, nonprofit".

21. On page 18, line 10, before the period insert:

"; provided, however, that any claim brought by a borrower pursuant to this section shall be limited to amounts required to reduce or extinguish the borrower's liability under the home loan plus the total amount paid by the borrower in connection with the transaction plus amounts required to recover costs, including reasonable attorney fees".

22. On page 18, line 24, after "to" strike the remainder of the line, strike line 25 in its entirety and on page 19, strike line 1 and insert in lieu thereof "two times the finance charge paid under the loan and forfeiture of the remaining interest under the loan;".

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23. On page 19, line 4, after the semicolon insert "and".
24. On page 19, line 7, strike "; and", strike lines 8 through 13 in their entirety and insert in lieu thereof a period.
25. On page 20, lines 24 and 25, strike "It shall be presumed that a" and insert in lieu thereof "A".
26. On page 21, lines 18 and 19, strike "determine that the home loan is not a" and insert in lieu thereof "prevent the acquisition of any".
27. On page 21, lines 23 and 24, strike "received in the normal course of business" and insert in lieu thereof "required by the federal Truth in Lending Act".
28. On page 22, lines 6 through 20, strike Paragraphs (1) and (2) in their entirety and insert in lieu thereof the following new paragraphs to read:
- "(1) within six years of the closing of a high-cost home loan, a violation of the Home Loan Protection Act in connection with the loan as an original action;
- (2) at any time during the term of a high-cost home loan, any defense, claim or counterclaim, or action to enjoin foreclosure or to preserve or obtain possession of the dwelling that secures the loan, including but not limited to a violation of the Home Loan Protection Act, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default; or
- (3) within three years of the closing of a home loan, a violation of Subsection B of Section 4 of the Home Loan Protection Act as a defense, claim or counterclaim or as an action to enjoin

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foreclosure or to preserve or obtain possession of the dwelling that secures the loan, after an action to collect on the home loan or foreclose on the collateral securing the home loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become sixty days in default. "

29. On page 28, lines 7 and 8, strike "the effective date of that act" and insert in lieu thereof "January 1, 2004".

Manny M. Aragon

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____