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FISCAL IMPACT REPORT

SPONSOR: HBIC. DATE TYPED: 03/12/03 HB 649/HBICS

SHORT TITLE: Home Loan Protection Act SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Business and Industry Committee Substitute for House Bill 649 enacts the Home Loan Protection Act to prohibit abusive mortgage lending practices, includes civil remedies, specifies enforcement provisions, and removes the exemption of consumer finance companies from the Mortgage Loan Company and Loan Broker Act.

The bill provides that a creditor shall not make a high-cost home loan unless the creditor has given the following notice to the borrower, or a substantially similar notice:

NOTICE TO BORROWER

You should be aware that you might be able to obtain a loan at a lower cost. You should shop around and compare loan rates and fees. 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 requested and the type of property that will secure your loan. The loan rate and fees could also vary based on which creditor or broker you select.

If you accept the terms of this loan, the creditor will have a mortgage lien on your home. You could lose your home and any money you put into it if you do not meet your payment obligations under the loan.

You should consult an attorney-at-law and a qualified independent credit counselor or other experienced financial advisor regarding the rate, fees and provisions of this mortgage loan before you proceed. A list of qualified counselors is available by contacting the New Mexico regulation and licensing department.

You are not required to complete this loan agreement merely because you have received this disclosure or have signed a loan application. Remember, property taxes and homeowner's insurance are your responsibility. Not all creditors provide escrow services for these payments. You should ask your creditor 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.

Significant Issues

The purpose of this bill is to address abusive mortgage lending practices in New Mexico. Such practices have exacerbated the loss of equity in homes and caused the number of foreclosures to increase in recent years.

According to this bill, the most common form of abusive lending is the making of loans that are equity-based, rather than income-based. The financing of points and fees in these loans provides immediate income to originators of these loans and encourages creditors to repeatedly refinance home loans.

While the marketplace appears to operate effectively for conventional mortgages, too many homeowners find themselves victims of creditors who provide loans with high costs and terms that are unnecessary to secure repayment of the loan.

ADMINISTRATIVE IMPLICATIONS

According to the Regulation and Licensing Department (RLD) Financial Institutions Division, verification of compliance with this substituted bill would be on a case-by-case basis, upon the receipt of a complaint regarding a licensee. Therefore, the number of complaints arising from adoption of this bill is unknown, thus making it difficult to determine if there would be administrative impact on RLD.

TECHNICAL ISSUES

The RLD Financial Institutions Division identifies the following technical problems with this bill:

- Page 5, lines 6 and 13; the payment and receipt of “finders fees” may be a violation of the Real Estate Settlement Procedures Act 24 CFR Part 3500.14 “Prohibition against kickbacks and un-earned fees.”

- Page 9, lines 15 through 19 would not allow a loan with a balloon payment.

- Page 12, lines 12-17; “A late payment fee may not be charged more than once...”
This language is unclear and compliance may prohibit lenders from assessing late fees on loans where the borrower is chronically past due.

LG/njw