

Senate Bill 509... relating to: Regulating certain consumer mortgage lenders, granting rule-making authority, and providing a penalty

BILL SPONSORS

Introduced by Senators **Schultz**.
Cosponsored by Representative *Montgomery*.

BILL HISTORY

Senate Bill 509 was introduced on 03-01-04 and referred to the Committee on Agriculture, Financial Institutions and Insurance.
A public hearing and executive session were held on 03-03-04.
On 03-03-04 the committee introduced and adopted Senate Amendment 1 which was recommended by committee on Agriculture, Financial Institutions and Insurance,
Ayes 5, Noes 0.
The committee recommended SB 509 on a vote Ayes 5 Noes 0

LRB ANALYSIS

Proposed Changes: This bill creates a subchapter of the statutes regulating certain consumer mortgage loans, defined as "covered loans." Significant provisions include the following:
Scope and definitions
This bill creates several prohibitions and requirements applicable to covered loans and the lenders that make them. The bill generally defines "covered loan" as a consumer credit mortgage loan transaction other than an open-end credit plan or reverse mortgage in which the consumer is a natural person, the loan is obtained by the consumer primarily for personal, family, or household purposes, the loan is secured by a mortgage on, or an equivalent security interest in, residential real property occupied or to be occupied by the consumer as the consumer's principal dwelling, and the terms of the loan provide any of the following:
(1) That the annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities. (2) That the total points and fees payable by the consumer at or before the loan closing exceed the greater of eight percent of the total loan amount or \$400. (The \$400 amount is adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1). (3) That the total points and fees payable by the consumer at or before the loan closing exceed six percent of the total loan amount. The bill defines "lender" as a person who originates a covered loan and to whom the covered loan is initially payable. "Lender" does not include an assignee of a covered loan or any person who, for at least 12 consecutive months, has failed to originate any covered loans.
Prohibitions and requirements on lenders and others
The bill imposes all of the following prohibitions and requirements: (1) With certain exceptions, no lender may make a covered loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments. (2) No lender may make a covered loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date, except in cases of default, fraud, or material misrepresentation by the consumer or any act or omission by the consumer that adversely affects the lender's or assignee's security for the loan or any right of the lender or assignee in that security or in certain cases where the real property that is pledged as security for the loan has been sold. (3) With certain exceptions, no lender may make a covered loan with a payment schedule that causes the principal balance to increase.

(4) No lender may make a covered loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the consumer's default. (5) No lender may make a covered loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan. (6) No lender may make covered loans to consumers based on the consumer's collateral without regard to the consumer's ability to repay, including the consumer's current or expected income, current obligations, and employment. A lender is presumed to violate this prohibition if the lender engages in a pattern or practice of making covered loans without verifying and documenting the consumer's repayment ability. (7) With certain exceptions, no lender may make a covered loan that refinances an existing covered loan that the lender made to the same consumer, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. In addition, with certain exceptions, no assignee or servicer of a covered loan may make a covered loan that refinances the covered loan, unless the refinancing takes place at least one year after the date on which the loan being refinanced was made or the refinancing is in the interest of the consumer. No lender, assignee of a covered loan, or servicer may engage in a pattern or practice of evading these prohibitions. (8) No lender may pay proceeds of a covered loan to a person who is under contract to make home improvements, as specified in the bill, unless the payment is made by an instrument that is payable to the consumer or jointly to the consumer and the person who is under contract or, with the consent of the consumer, the payment is made through a third party in accordance with a written agreement signed by the consumer, the lender, and the person under contract. (9) With certain exceptions, no lender may finance through a covered loan, or finance to the same customer within 30 days of making a covered loan, any individual or group credit life, credit accident and health, credit disability, or credit unemployment insurance product on a prepaid single premium basis sold in conjunction with a covered loan. (10) No lender may knowingly replace or consolidate a zero-interest rate or other subsidized low-rate loan made by a governmental or nonprofit lender with a covered loan within the first ten years of the zero-interest rate or other subsidized low-rate loan unless the current holder of the loan consents in writing to the refinancing. (11) No lender may knowingly contract with any person who is engaged in work as a mortgage banker or mortgage broker but who has not obtained the registration required by law. (12) No lender, mortgage banker, mortgage broker, loan originator (a type of agent of a mortgage banker or mortgage broker), or licensed lender (a person licensed by the Department of Financial Institutions (DFI) to make certain high interest loans) may knowingly make, propose, or solicit fraudulent, false, or misleading statements on any document relating to a covered loan. (13) No lender, mortgage banker, mortgage broker, loan originator, or licensed lender may recommend or encourage an individual to default on an existing loan or other obligation before and in connection with the making of a covered loan that refinances all or any portion of that existing loan or obligation.

Prepayment

The bill allows a consumer to prepay a covered loan at any time without penalty if the payment is made in the context of a refinancing of the covered loan and if the covered loan is held by the refinancing lender. The bill also allows the servicer of a covered loan to impose a prepayment penalty, unless the servicer is also the lender and holds the loan at the time of the refinancing. The bill provides the following limitations on any otherwise permissible prepayment penalty:

(1) A prepayment penalty is permitted only during the 36 months immediately following the date of consummation of the covered loan. (2) A lender may not include a prepayment penalty in a covered loan unless the lender offers the consumer the option of choosing a loan product without a prepayment penalty and the offer is in writing, is initiated by the consumer, and includes a prescribed notice to the consumer. (3) A prepayment penalty is limited to a calculated amount for certain types of covered loans and is not permitted on other types of covered loans.

Required notice

The bill requires a lender to ensure that the consumer is given a specified notice at least three business days before the lender makes the applicable covered loan.

Exclusive state regulation

The bill provides that the state has sole authority, except as provided under federal law, to regulate any matter governed under the bill or under a rule promulgated pursuant to the bill, and prohibits local governmental units from attempting to regulate any matter governed by the bill.

Debt collection

With certain exceptions, the bill exempts specified personal property and household goods of the consumer from levy, execution, or sale in satisfaction of a judgment for an obligation arising from a covered loan.

Administration and penalties

The bill allows DFI to promulgate rules, perform investigations, hold contested case hearings, and issue orders to administer and enforce the provisions created under the bill. With certain exceptions, if the person required to appear at an enforcement hearing fails to appear or if upon the record made at the hearing DFI finds that a violation has been established, DFI may issue an order specifying any of the following: (1) That the person must cease and desist from the violation or practice and make restitution for any actual damages suffered by a consumer. (2) That the person must forfeit not more than \$1,000 per violation or, if the person willfully or knowingly violated this subchapter, not less than \$1,000 nor more than \$10,000 per violation. (3) That the person must pay to DFI the costs of its investigation. (4) That a license, registration, or certification issued by DFI to the person is suspended or revoked or will not be renewed. (5) That any individual who is responsible for the violation must be removed from working in any capacity related to the violation or related to activities regulated by DFI. (6) Any additional conditions that DFI considers reasonable. However, it is a defense to any alleged violation if the person alleged to have committed the violation establishes that the person acted in good faith while committing the violation and that, no later than 60 days after the discovery of the violation and before any investigation or other enforcement action by DFI, the person notified the affected consumer of the violation and either made appropriate adjustments to the loan to bring the loan into compliance or changed the terms of the loan in a manner beneficial to the consumer so that the loan is no longer a covered loan.

Parity for federally insured depository institutions

The bill provides that, if federal law preempts or prohibits the application of the provisions of the bill to any federally chartered bank, trust company, savings and loan association, savings bank, or credit union, the bill does not apply to the same type of state chartered bank, trust company, savings and loan association, savings bank, or credit union, or to any subsidiary thereof.

Major Impact: Policy Changes

FISCAL EFFECT	Not Required
SUPPORT	<p>The following person/people appeared in favor of this bill: (1) Jim Hough, WI Mortgage Brokers Assn, Madison. (2) Michael Vaughan, Cendant Corporation, Madison.</p> <p>The following person/people registered in favor of this bill: (1) Andy Franken, Reinsurance Assn. of America, Madison. (2) Daryll Lund, Community Bankers, Madison. (3) Tim Elverman, Bank One, Milwaukee. (4) Rose Oswald Poels, WI Bankers Association, Madison.</p> <p>No one registered his or her support for the bill with the State Ethics Board, but did not testify or register at the public hearing.</p> <p>No one registered their intention to lobby on SB 509 who did not take a position on the bill.</p>
OPPOSITION	<p>No one appeared in opposition to this bill.</p> <p>No one registered in opposition to this bill. The Wisconsin Association of Mortgage Brokers registered their opposition for the bill with the State Ethics Board, but did not testify or register at the public hearing.</p>
CONTACT	John O'Brien, Clerk Sen. Committee on Ag. Fin. Inst. & Insurance 266-0703
DATE	March 8, 2004

SB 509 Adoption

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

Date: _____

Type _____

Moved by: Schultz

Seconded by: Rodriguez

AB _____

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt 2510 to A/S Sub Amdt _____

A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement
- Introduction Rejection Tabling Nonconcurrence

Committee Member

Aye No Absent Not Voting

Senator Dale Schultz, Chair

Senator Ronald Brown

Senator Neal Kedzie

Senator David Hansen

Senator Julie Lassa

Totals: _____

Motion Carried

Motion Failed

Vote Record

Committee on Agriculture, Financial Institutions and Insurance

Date: 03-03-04 Type Exec

Bill Number: 5 509 as amended

Moved by: Schultz Seconded by: _____

Motion: PASSAGE

Committee Member

Senator Dale Schultz, Chair

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Senator Neal Kedzie

Senator David Hansen

Senator Julie Lassa

Aye No Absent Not Voting

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Motion Failed

MEMORANDUM

FROM: Jim Hough, Rose Oswald Poels & Daryll Lund

DATE: February 25, 2004

RE: High Cost Mortgage Lending/~~AB 792~~ & the Substitute Amendment

SB509

Following are changes embodied in the Substitute Amendment to Assembly Bill 792 relating to "High Cost Mortgage Lending" commonly referred to as the "predatory lending" bill.

- Changes the Subchapter heading from "PREDATORY MORTGAGE LENDING" to "RESPONSIBLE HIGH COST MORTGAGE LENDING" to eliminate the negative connotations and clarify the true consumer protection intent.
- Provides that total points and fees that exceed 6% of the total loan amount will trigger the high cost loan provisions rather than 8% as in the original bill and in the federal definition. This change will expand the number of loans covered.
- Defines and clarifies, statutorily, how a lender determines a potential borrower's ability to repay a covered loan.
- Limits prepayment penalties to within the first 36 months of the loan and requires offering the option of a product without a prepayment penalty.
- Prohibits the sale of single premium credit insurance.
- Prohibits balloon payments.
- Prohibits the refinancing of zero interest loans.
- Provides parity for federally insured depository institutions.
- Prohibits the enforcement of security interest on household goods.

The WMBA, WBA and CBW are supportive of the provisions of AB 792, including the changes in the Sub. We would very much like to see passage of a high cost mortgage lending bill this session. We have been examining the issue for 2 to 3 years and believe that we would all be well served to have a consumer protection law in Wisconsin that is also sensitive to a complex national market and sometimes overlapping state and federal regulation.

Thank you.

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