

2007 SENATE BILL 352

December 10, 2007 – Introduced by Senators WIRCH, LASSA and COGGS, cosponsored by Representatives MUSSER and A. WILLIAMS. Referred to Committee on Veterans and Military Affairs, Biotechnology and Financial Institutions.

1 **AN ACT** *to create* 138.059 of the statutes; **relating to:** residential mortgage
2 loans, providing an exemption from emergency rule procedures, granting
3 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill imposes certain disclosure requirements on lenders, loan originators, and closing agents with respect to residential mortgage loans. The bill applies only to loans secured by a real estate mortgage on, or an equivalent security interest in, a one-family to four-family dwelling which the borrower uses as his or her principal place of residence. When a borrower applies for a loan, the loan originator for the loan must, prior to the time that the borrower submits the completed loan application, provide to the borrower a copy of written informational materials developed by the Division of Banking in the Department of Financial Institutions (division). These informational materials must contain information about various types of loans and their respective risks and benefits and must be designed to educate individuals regarding loan options and terminology. When a lender has made a loan commitment to a borrower, the loan originator for the loan must, not later than the time that the loan commitment is delivered to the borrower, provide to the borrower a written disclosure, on a form prescribed by the division, that contains all of the following information relating to the loan:

1. Identification of the type of loan, loan amount, and loan term.
2. If the loan is a fixed rate loan, the annual percentage rate of interest to be paid on the loan.

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3. If the loan is a variable rate loan, the annual percentage rate of interest initially to be paid on the loan; the applicable index for the loan; the maximum frequency with which the loan can be adjusted and the maximum amount of the increase with each adjustment; and, if the loan is adjusted at the maximum frequency and maximum amount for the first five years of the loan, the initial monthly payment of principal and interest on the loan and the new monthly payment of principal and interest on the loan, after each adjustment, for this five-year period.

4. Whether the borrower's monthly payments will include amounts for the escrow of property taxes or property insurance or both.

5. Whether there is any prepayment penalty applicable to the loan and, if so, under what circumstances the prepayment penalty would apply.

6. Whether the loan terms include mandatory arbitration of disputes between the lender and borrower.

Before the loan closing, the lender or loan originator must provide to the borrower an update of this disclosure document identifying, in a clear and conspicuous manner, any changes. At the time of the loan closing, the closing agent must provide the updated disclosure document to the borrower and the borrower must sign and date the document to acknowledge receipt of it.

Any lender, loan originator, or closing agent that violates these requirements may be required to forfeit up to \$100 for each violation except that the forfeiture is from \$100 to \$1,000 if the lender, loan originator, or closing agent willfully or knowingly committed the violation. In addition, any person aggrieved by a violation may bring a civil action to recover three times the amount of actual damages caused by the violation or \$500, whichever is greater, along with attorney fees and costs.

The division must promulgate rules necessary to implement, administer, and enforce the provisions of the bill. The division must also make available to lenders and the public, including through the Internet, the disclosure forms and informational materials required under the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 138.059 of the statutes is created to read:

2 **138.059 Residential mortgage lending disclosure. (1) DEFINITIONS.** In
3 this section:

4 (a) "Borrower" means a person who has applied for a loan.

5 (b) "Business day" means a business day, as defined in s. 421.301 (6), that is not
6 a legal holiday under s. 995.20 or a federal legal holiday.

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1 (c) “Closing agent” means a person who provides loan closing services to the
2 lender and borrower to ensure the execution of necessary documents and the
3 disbursement of funds in connection with the transaction.

4 (d) “Division” means the division of banking in the department of financial
5 institutions.

6 (e) “Lender” means the mortgagee or other security interest holder under a loan
7 for which the borrower has applied.

8 (f) “Loan” means a loan secured by a real estate mortgage on, or an equivalent
9 security interest in, a one-family to 4-family dwelling which the borrower uses as
10 his or her principal place of residence, but does not include a manufactured home
11 transaction as defined in s. 138.056 (1) (bg) or any credit transaction pursuant to an
12 open-end credit plan.

13 (g) “Loan closing” means the execution by the borrower of a promissory note,
14 mortgage or other security agreement, and any other documents that are required
15 by the lender to be signed as a condition to the granting of a loan to the borrower and
16 to the delivery of the loan proceeds on behalf of the borrower.

17 (h) “Loan originator” means a person who finds or negotiates a loan or loan
18 commitment from a lender for a borrower, regardless of whether the person acts on
19 behalf of a mortgage broker or as an exclusive agent or employee of the lender.

20 (i) “Variable rate loan” means a loan the terms of which permit the interest rate
21 to be increased or decreased.

22 **(2)** REQUIRED INFORMATIONAL MATERIALS AT TIME OF LOAN APPLICATION. When a
23 borrower applies for a loan, the loan originator for the loan shall, prior to the time
24 that the borrower submits the completed loan application, provide to the borrower
25 a copy of the written informational materials specified in sub. (5) (b).

SENATE BILL 352**SECTION 1**

1 **(3) REQUIRED DISCLOSURES AT TIME OF LOAN COMMITMENT.** (a) When a lender has
2 made a loan commitment to a borrower, the loan originator for the loan shall, not
3 later than the time that the loan commitment is delivered to the borrower, provide
4 to the borrower a written disclosure, on a form prescribed by the division under sub.
5 (5) (a), that contains all of the following information relating to the loan:

6 1. Identification of the type of loan, loan amount, and loan term.

7 2. If the loan is a fixed rate loan, the annual percentage rate of interest to be
8 paid on the loan.

9 3. If the loan is a variable rate loan, all of the following:

10 a. The annual percentage rate of interest initially to be paid on the loan.

11 b. The applicable index for the loan.

12 c. The maximum frequency with which the loan can be adjusted and the
13 maximum amount of the increase with each adjustment.

14 d. If the loan is adjusted at the maximum frequency and maximum amount for
15 the first 5 years of the loan, the initial monthly payment of principal and interest on
16 the loan and the new monthly payment of principal and interest on the loan, after
17 each adjustment, for this 5-year period.

18 4. Whether the borrower's monthly payments will include amounts for the
19 escrow of property taxes or property insurance or both.

20 5. Whether there is any prepayment penalty applicable to the loan and, if so,
21 under what circumstances the prepayment penalty would apply.

22 6. Whether the loan terms include mandatory arbitration of disputes between
23 the lender and borrower.

24 (b) At the time of providing the disclosure document required under par. (a) to
25 a borrower, the loan originator shall sign and date the document.

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1 **(4) REQUIRED DISCLOSURES AT TIME OF LOAN CLOSING.** (a) Not less than one nor
2 more than 5 business days prior to the loan closing, the lender or loan originator shall
3 provide to the borrower an update of the disclosure document required under sub.
4 (3) (a). This updated disclosure document shall identify, in a clear and conspicuous
5 manner, any changes to the information specified in the disclosure document
6 required under sub. (3) (a).

7 (b) The updated disclosure document required under par. (a) shall be signed
8 and dated by an authorized representative of the lender or loan originator, and a copy
9 or duplicate original shall be provided to the closing agent responsible for the loan
10 closing.

11 (c) At the time of the loan closing, the closing agent shall provide a copy or
12 duplicate original of the updated disclosure document required under par. (a) to the
13 borrower. The borrower shall sign and date the document to acknowledge receipt of
14 the document.

15 **(5) DISCLOSURE FORMS AND INFORMATIONAL MATERIALS.** (a) The division shall
16 develop disclosure forms to be used by lenders for the purposes described in subs. (3)
17 and (4). The division shall develop a different form for each different type of loan.
18 Each form shall include, in clear plain language, all of the information specified in
19 sub. (3) (a) 1. to 6. to the extent applicable to the type of loan for which the form is
20 designed for use. In developing the forms under this paragraph, the division shall
21 consider other disclosure requirements under federal and state law and shall, to the
22 extent possible, attempt to minimize the number of different disclosure documents
23 that lenders are required to provide to borrowers.

24 (b) The division shall develop written informational materials to be used by
25 lenders for the purpose described in sub. (2). These informational materials shall

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1 contain information about various types of loans and their respective risks and
2 benefits and shall be designed to educate individuals regarding loan options and
3 terminology.

4 (c) The division shall make copies of the disclosure forms under par. (a) and
5 informational materials under par. (b) available, upon request, to lenders and to the
6 public, including making these disclosure forms and informational materials
7 available on the Internet Web site of the department of financial institutions. The
8 division may charge lenders and the public a reasonable fee for printed copies of
9 disclosure forms and informational materials supplied under this paragraph.

10 **(6) PENALTY AND RIGHT OF ACTION.** (a) Any lender, loan originator, or closing
11 agent that violates this section may be required to forfeit not more than \$100 for each
12 violation or, if the lender, loan originator, or closing agent willfully or knowingly
13 violates this section, not less than \$100 nor more than \$1,000 for each violation.

14 (b) In addition to any other remedies, any person aggrieved by a violation of this
15 section by a lender, loan originator, or closing agent may bring a civil action for
16 damages. In such an action, a lender, loan originator, or closing agent that violates
17 this section shall be liable for 3 times the amount of actual damages caused by the
18 violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the costs
19 of the action, including reasonable attorney fees. In such an action, the court may
20 also award any equitable relief that the court determines is appropriate.

21 **(7) RULES.** The division shall promulgate rules necessary to implement,
22 administer, and enforce this section, including prescribing the forms under sub. (5)
23 (a) and the informational materials under sub. (5) (b).

24 **(8) CONSUMER PROTECTION LAW UNAFFECTED.** Nothing in this section shall
25 displace any provision of chs. 421 to 428 applicable to a loan.

SENATE BILL 352**1 SECTION 2. Nonstatutory provisions.**

2 (1) In this section, “division” means the division of banking in the department
3 of financial institutions.

4 (2) The division shall submit in proposed form the rules required under section
5 138.059 (7) of the statutes, as created by this act, to the legislative council staff under
6 section 227.15 (1) of the statutes no later than the first day of the 6th month
7 beginning after the effective date of this subsection.

8 (3) Using the emergency rules procedure under section 227.24 of the statutes,
9 the division shall promulgate the rules required under section 138.059 (7) of the
10 statutes, as created by this act, for purposes of implementing this act, for the period
11 before the effective date of the rules submitted under subsection (2). The division
12 shall promulgate these emergency rules no later than the first day of the 6th month
13 beginning after the effective date of this subsection. Notwithstanding section 227.24
14 (1) (c) and (2) of the statutes, these emergency rules may remain in effect until July
15 1, 2010, or the date on which permanent rules take effect, whichever is sooner.
16 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the division is not
17 required to provide evidence that promulgating a rule under this subsection as an
18 emergency rule is necessary for the preservation of the public peace, health, safety,
19 or welfare and is not required to provide a finding of emergency for a rule
20 promulgated under this subsection.

21 (a) In addition to any other remedies, any person aggrieved by a violation of this
22 section by a lender, loan originator, or closing agent may bring a civil action for
23 damages. In such an action, a lender, loan originator, or closing agent that violates
24 this section shall be liable for 3 times the amount of actual damages caused by the
25 violation or \$500, whichever is greater, and, notwithstanding s. 814.04 (1), the costs

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1 of the action, including reasonable attorney fees. In such an action, the court may
2 also award any equitable relief that the court determines is appropriate.

3 **SECTION 3. Initial applicability.**

4 (1) This act first applies to loans originated on the effective date of this
5 subsection.

6 **SECTION 4. Effective dates.** This act takes effect on the first day of the 6th
7 month beginning after publication, except as follows:

8 (1) SECTION 2 of this act takes effect on the day after publication.

9 (END)