

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1407

By: Toure

AS INTRODUCED

An Act relating to consumer credit; defining terms; prohibiting certain fees and charges on certain home loans; limiting and prohibiting certain practices on certain home loans; providing remedies for violations of act; limiting certain investments by lenders; providing for applicability of act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-701 of Title 14A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C., Section 1841 et seq., as amended from time to time.

(2) "Annual percentage rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act, 15 U.S.C., Section 1601, et seq., and the regulations promulgated thereunder by the Federal Reserve Board, as said act and regulations are amended from time to time.

(3) "Benchmark rate" is the interest rate which the borrower can reduce by paying bona fide discount points; this rate shall not exceed the weekly average yield of Treasury securities having a maturity of five (5) years, on the fifteenth day of the month immediately preceding the month in which the loan is made, plus four (4) percentage points.

(4) "Bona fide discount points" means loan discount points which are:

- (a) knowingly paid by the borrower,
- (b) paid for the express purpose of lowering the benchmark rate,
- (c) reducing the interest rate or time-price differential applicable to the loan, from an interest rate which does not exceed the benchmark rate, and
- (d) recouped within the first four (4) years of the scheduled loan payments.

For purposes of assessing compliance with paragraph (b) of this subsection, loan discount points will be considered to be recouped within the first four (4) years of the scheduled loan payments if the reduction in the interest rate that is achieved by the payment of the loan discount points reduces the interest charged on the scheduled payments such that the borrower's dollar amount of savings in interest over the first four (4) years is equal to or exceeds the dollar amount of loan discount points paid by the borrower.

(5) "High-cost home loan" means a home loan in which the terms of the loan exceed one or more of the thresholds as defined in subsection (9) of this section.

(6) "Home loan" means a loan, other than an open-end credit plan or a reverse mortgage transaction, where:

- (a) the principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association,
- (b) the borrower is a natural person,
- (c) the debt is incurred by the borrower primarily for personal, family, or household purposes, and
- (d) the loan is secured by a mortgage or deed of trust on real estate upon which there is located or there is to

be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the principal dwelling of the borrower.

(7) "Points and fees" means:

- (a) all items required to be disclosed under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential,
- (b) all charges for items listed under Section 226.4(c) (7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees",
- (c) all compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a tablefunded transaction, not otherwise included in paragraph (a) or (b) of this subsection,
- (d) all premiums financed by the lender, directly or indirectly, for any credit life, credit disability, or credit unemployment insurance, or any other life or health insurance; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender, and
- (e) "Points and fees" shall not include:
 - (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for

perfecting, releasing, or satisfying a security interest, and

- (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker, including but not limited to the following: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorney fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under paragraph (a) of this subsection; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in Section 226.4(d) (2) of Title 12 of the Code of Federal Regulations are met.

(8) "Tablefunded transaction" means a settlement at which a mortgage loan is funded by an advance of loan funds and there is a subsequent assignment of the loan from the person identified as the lender in the loan documents to the person advancing the funds.

(9) "Threshold" means:

- (a) for a first lien mortgage loan the trigger rate equals or exceeds six (6) percentage points over the weekly average yield on five-year United States securities,
- (b) for a subordinate mortgage lien or a mortgage secured solely by a security interest in a manufactured home, the trigger rate equals or exceeds eight (8) percentage points over the weekly average yield on five-year United States securities, or

(c) the total points and fees, excluding bona fide discount points, exceed:

- (i) five percent (5%) of the total amount if the total loan amount is Forty Thousand Dollars (\$40,000.00) or more, or
- (ii) the lesser of six percent (6%) of the total loan amount or One Thousand Two Hundred Dollars (\$1,200.00) if the total loan amount is less than Forty Thousand Dollars (\$40,000.00).

(10) "Total loan amount" means the same as the term "total loan amount" as used in Section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Official Staff Commentary of the Federal Reserve Board.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-702 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan if:

- (a) in the first twelve (12) months after the loan closing, the prepayment fees or penalties exceed in the aggregate more than two percent (2%) of the loan amount prepaid, or
- (b) in the second twelve (12) months after the loan closing, the prepayment fees or penalties exceed in the aggregate more than one percent (1%) of the loan amount prepaid.

No prepayment penalty shall be allowed to be contracted for after the second year following the loan closing.

(2) It shall be unlawful for any lender in a home loan transaction to finance, directly or indirectly, any credit life, credit disability, credit property, or credit unemployment insurance, or any other life or health insurance premiums or any

debt cancellation or suspension agreement or contract fees; provided, that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis shall not be considered financed by the lender.

(3) (a) No lender may knowingly or intentionally engage in the unfair act or practice of "flipping" a home loan.

(b) "Flipping" a loan is the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. In addition, the following refinanced home loans shall be presumed to be flipped loans:

(i) when the primary tangible benefit to the borrower is an interest rate lower than the interest rate(s) on debts satisfied or refinanced in connection with the home loan, and it will take more than four (4) years for the borrower to recoup the costs of the points and fees and other closing costs through savings resulting from the lower interest rate, or

(ii) the new loan refinances an existing home loan that is a special mortgage originated, subsidized or guaranteed by or through a state, tribal or local government, or nonprofit organization, which either bears a below-market interest rate at the time the loan was originated, or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where

no payments are required under specified conditions, and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage.

(4) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-703 of Title 14A, unless there is created a duplication in numbering, reads as follows:

(1) A high-cost home loan shall be subject to the following limitations and prohibited practices:

- (a) No call provision. No high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.
- (b) No balloon payment. No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
- (c) No negative amortization. No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.
- (d) No increased interest rate. No high-cost home loan may contain a provision that increases the interest rate after default. This provision does not apply to

interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

- (e) No advance payments. No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
- (f) No modification or deferral fees. A lender may not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless:
 - (i) the action provides a material benefit to the consumer, and
 - (ii) the amount of the fee or charge does not exceed:
 - 1. an amount equal to one-half of one percent (1/2 of 1%) of the total loan amount, or
 - 2. Three Hundred Dollars (\$300.00) if the amount of the loan does not exceed Sixty Thousand Dollars (\$60,000.00).
- (g) No mandatory arbitration clause. No high-cost loan may be subject to a mandatory arbitration clause that limits in any way the right of the borrower to seek relief through the judicial process.
- (h) No lending without home-ownership counseling. A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the United States Department of Housing and Urban Development, a state housing financing

agency, or the regulatory agency of jurisdiction of the lender that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

- (i) No lending without due regard to repayment ability.

As used in this section, the term "obligor" refers to each borrower, coborrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the total monthly debts of the obligor, including amounts owed under the loan, do not exceed fifty percent (50%) of the monthly gross income of the obligor as verified by the credit application, the financial statement of the obligor, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan)

exceed fifty percent (50%) of the monthly gross income of the obligor.

(j) No benefit from refinancing existing high-cost home loan with new high-cost home loan. A lender may not charge a borrower points, fees, or other charges in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender.

(k) Restrictions on home-improvement contracts. A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than:

(i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or

(ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(2) Right to Cure.

(a) Right to reinstate. If a creditor asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument, the borrower, or anyone authorized to act on the borrower's behalf, shall have the right at any time, up to the time title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, to cure the default, and reinstate the home loan by tendering the amount or performance as specified herein. Cure of default as provided herein shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as

of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

- (b) Grounds for reinstatement. Before any action filed to foreclose upon the home or other action is taken to seize or transfer ownership of the home, a notice of the right to cure the default must be delivered to the borrower informing the borrower of the following:
 - (i) the nature of default claimed on the home loan, and of the borrower's right to cure the default by paying the sum of money required to cure the default, provided that a creditor or servicer may not refuse to accept any partial payment made or tendered in response to said notice. If the amount necessary to cure the default will change during the thirty-day period after the effective date of the notice, due to the application of a daily interest rate or the addition of late fees, as allowed by this act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the thirty-day period,
 - (ii) the date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure, or other action to seize the home, which date shall not be less than thirty (30) days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made,
 - (iii) that if the borrower does not cure the default by the date specified, the creditor may take steps to terminate the borrower's ownership in the

property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the home, and

(iv) the name and address of the creditor and the telephone number of a representative of the creditor whom the borrower may contact if the borrower disagrees with the creditor's assertion that a default has occurred or the correctness of the creditor's calculation of the amount required to cure the default.

(c) Fees. To cure a default under this subsection, a borrower shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default as provided for in this section, other than the fees specifically allowed by this section. The borrower shall not be liable for any attorney fees relating to the borrower's default that are incurred by the lender prior to or during the thirty-day period set forth in subparagraph (ii) of paragraph (b) of this subsection, nor for any such fees in excess of One Hundred Dollars (\$100.00) that are incurred by the lender after the expiration of the thirty-day period but prior to the time the lender files a foreclosure action or takes other action to seize or transfer ownership of the home. After the lender files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower shall only be liable for attorney fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours.

(d) Enforcement of security instrument. If a default is cured prior to the initiation of any action to foreclose or to seize the residence, the creditor shall not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor shall take such steps as are necessary to terminate the foreclosure proceeding or other action. Any creditor making a home loan who has the legal right to foreclose must use the judicial foreclosure procedures of the state wherein the property securing the loan is located. The borrower shall have the right to assert in a judicial foreclosure proceeding or other action the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any based on violations of this act, though no such claim or defense shall be deemed a compulsory counterclaim.

(3) Unfair and Deceptive Acts or Practices. Except as provided in subsection (4) of this section, the making of a high-cost home loan which violates any provisions of this section or Section 2 of this act is hereby declared usurious in violation of the provisions of this act and unlawful as an unfair or deceptive act or practice in or affecting commerce as defined under relevant statutes of this state. The provisions of this act shall apply to any person who in bad faith attempts to avoid the application of this act by:

(a) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this act when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan,

- (b) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this act, or
- (c) any other such subterfuge.

(4) The Attorney General, the State Banking Commissioner, or any party to a high-cost home loan may enforce the provisions of this act. The consumer protections and remedies provided by this section are in addition to other consumer protections and remedies that may otherwise be available by law. A borrower prevailing in a claim under this act shall be entitled to recover reasonable costs and attorney fees. Any person seeking damages or penalties under the provisions of this section may recover damages under either this act or another state act, but not both.

(5) Corrections and Unintentional Violations. A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsection (1) of this section, will not be deemed to have violated this section if the lender establishes that either:

- (a) within thirty (30) days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower:
 - (i) make the high-cost home loan satisfy the requirements of subsection (1) of this section, or
 - (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section, or
- (b) the compliance failure was not intentional and resulted from a bona fide error notwithstanding the

maintenance of procedures reasonably adapted to avoid such errors, and within sixty (60) days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower:

- (i) make the high-cost home loan satisfy the requirements of subsection (1) of this section, or
- (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment, with respect to the obligations of a person under this section, is not a bona fide error.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-704 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A lender shall not make investments that are backed by home loans that violate Section 2 or 3 of this act. Any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all claims and defenses with respect to the loan that the borrower could assert against the creditor or broker of the loan.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-705 of Title 14A, unless there is created a duplication in numbering, reads as follows:

If any provision of this act is declared to be inapplicable to any specific category, type, or kind of loan or points and fees, the provisions of this act shall nonetheless continue to apply with respect to all other loans and points and fees.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-706 of Title 14A, unless there is created a duplication in numbering, reads as follows:

This act shall apply to all loans made or entered into after the effective date of this act.

SECTION 7. This act shall become effective November 1, 2003.

49-1-5132 DLW 12/06/02