

This Document can be made available  
in alternative formats upon request

State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH  
SESSION

HOUSE FILE No. **387**

January 29, 2007

Authored by Clark, Tschumper, Atkins, Mahoney, Dominguez and others

The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act  
1.2 relating to commerce; regulating predatory lending practices; providing remedies  
1.3 and criminal penalties; amending Minnesota Statutes 2006, section 58.13,  
1.4 subdivision 1, by adding a subdivision; proposing coding for new law in  
1.5 Minnesota Statutes, chapters 58; 82B.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 58.13, subdivision 1, is amended to read:

1.8 Subdivision 1. **Generally.** No person acting as a residential mortgage originator  
1.9 or servicer, including a person required to be licensed under this chapter, and no person  
1.10 exempt from the licensing requirements of this chapter under section 58.04, shall:

1.11 (1) fail to maintain a trust account to hold trust funds received in connection with a  
1.12 residential mortgage loan;

1.13 (2) fail to deposit all trust funds into a trust account within three business days of  
1.14 receipt; commingle trust funds with funds belonging to the licensee or exempt person; or  
1.15 use trust account funds for any purpose other than that for which they are received;

1.16 (3) unreasonably delay the processing of a residential mortgage loan application,  
1.17 or the closing of a residential mortgage loan. For purposes of this clause, evidence of  
1.18 unreasonable delay includes but is not limited to those factors identified in section 47.206,  
1.19 subdivision 7, clause (d);

1.20 (4) fail to disburse funds according to its contractual or statutory obligations;

1.21 (5) fail to perform in conformance with its written agreements with borrowers,  
1.22 investors, other licensees, or exempt persons;

1.23 (6) charge a fee for a product or service where the product or service is not actually  
1.24 provided, or misrepresent the amount charged by or paid to a third party for a product  
1.25 or service;

2.1 (7) fail to comply with sections 345.31 to 345.60, the Minnesota unclaimed property  
2.2 law;

2.3 (8) violate any provision of any other applicable state or federal law regulating  
2.4 residential mortgage loans including, without limitation, sections 47.20 to 47.208;

2.5 (9) make or cause to be made, directly or indirectly, any false, deceptive, or  
2.6 misleading statement or representation in connection with a residential loan transaction  
2.7 including, without limitation, a false, deceptive, or misleading statement or representation  
2.8 regarding the borrower's ability to qualify for any mortgage product;

2.9 (10) conduct residential mortgage loan business under any name other than that  
2.10 under which the license or certificate of exemption was issued;

2.11 (11) compensate, whether directly or indirectly, coerce or intimidate an appraiser for  
2.12 the purpose of influencing the independent judgment of the appraiser with respect to the  
2.13 value of real estate that is to be covered by a residential mortgage or is being offered as  
2.14 security according to an application for a residential mortgage loan;

2.15 (12) issue any document indicating conditional qualification or conditional approval  
2.16 for a residential mortgage loan, unless the document also clearly indicates that final  
2.17 qualification or approval is not guaranteed, and may be subject to additional review;

2.18 (13) make or assist in making any residential mortgage loan with the intent that the  
2.19 loan will not be repaid and that the residential mortgage originator will obtain title to  
2.20 the property through foreclosure;

2.21 (14) provide or offer to provide for a borrower, any brokering or lending services  
2.22 under an arrangement with a person other than a licensee or exempt person, provided that  
2.23 a person may rely upon a written representation by the residential mortgage originator that  
2.24 it is in compliance with the licensing requirements of this chapter;

2.25 (15) claim to represent a licensee or exempt person, unless the person is an employee  
2.26 of the licensee or exempt person or unless the person has entered into a written agency  
2.27 agreement with the licensee or exempt person;

2.28 (16) fail to comply with the record keeping and notification requirements identified  
2.29 in section 58.14 or fail to abide by the affirmations made on the application for licensure;

2.30 (17) represent that the licensee or exempt person is acting as the borrower's agent  
2.31 after providing the nonagency disclosure required by section 58.15, unless the disclosure  
2.32 is retracted and the licensee or exempt person complies with all of the requirements of  
2.33 section 58.16;

2.34 (18) make, provide, or arrange for a residential mortgage loan that is of a lower  
2.35 investment grade if the borrower's credit score or, if the originator does not utilize credit  
2.36 scoring or if a credit score is unavailable, then comparable underwriting data, indicates

3.1 that the borrower may qualify for a residential mortgage loan, available from or through  
 3.2 the originator, that is of a higher investment grade, unless the borrower is informed that  
 3.3 the borrower may qualify for a higher investment grade loan with a lower interest rate  
 3.4 and/or lower discount points, and consents in writing to receipt of the lower investment  
 3.5 grade loan.

3.6 For purposes of this section, "investment grade" refers to a system of categorizing  
 3.7 residential mortgage loans in which the loans are: (i) commonly referred to as "prime" or  
 3.8 "subprime"; (ii) commonly designated by an alphabetical character with "A" being the  
 3.9 highest investment grade; and (iii) are distinguished by interest rate or discount points  
 3.10 or both charged to the borrower, which vary according to the degree of perceived risk  
 3.11 of default based on factors such as the borrower's credit, including credit score and  
 3.12 credit patterns, income and employment history, debt ratio, loan-to-value ratio, and prior  
 3.13 bankruptcy or foreclosure;

3.14 (19) make, publish, disseminate, circulate, place before the public, or cause to be  
 3.15 made, directly or indirectly, any advertisement or marketing materials of any type, or any  
 3.16 statement or representation relating to the business of residential mortgage loans that is  
 3.17 false, deceptive, or misleading;

3.18 (20) advertise loan types or terms that are not available from or through the licensee  
 3.19 or exempt person on the date advertised, or on the date specified in the advertisement.  
 3.20 For purposes of this clause, advertisement includes, but is not limited to, a list of sample  
 3.21 mortgage terms, including interest rates, discount points, and closing costs provided by  
 3.22 licensees or exempt persons to a print or electronic medium that presents the information  
 3.23 to the public;

3.24 (21) use or employ phrases, pictures, return addresses, geographic designations, or  
 3.25 other means that create the impression, directly or indirectly, that a licensee or other  
 3.26 person is a governmental agency, or is associated with, sponsored by, or in any manner  
 3.27 connected to, related to, or endorsed by a governmental agency, if that is not the case; ~~or~~

3.28 (22) violate section 82.49, relating to table funding;

3.29 (23) make, provide, or arrange for a residential mortgage loan without verifying  
 3.30 the borrower's reasonable ability to pay the principal and interest on the loan, and pay  
 3.31 real estate taxes and home insurance. For loans in which the interest rate may vary, the  
 3.32 reasonable ability to pay must be determined based on the maximum monthly payment  
 3.33 that could be due during the first seven years of the loan term, which amount must be  
 3.34 calculated with reference to the maximum interest rate allowable under the loan assuming  
 3.35 no default by the borrower and assuming a fully indexed rate and a repayment schedule  
 3.36 which achieves full amortization over the life of the loan. For all residential mortgage

4.1 loans, the borrower's income and financial resources must be verified by tax returns,  
4.2 payroll receipts, bank records, or other similarly reliable documents. A statement by  
4.3 the borrower to the residential mortgage originator or exempt person of the borrower's  
4.4 income and resources is not sufficient to establish the existence of the income or resources  
4.5 when verifying the reasonable ability to pay;

4.6 (24) engage in "churning." As used in this section, "churning" means to make,  
4.7 provide, or arrange for a residential mortgage loan to a borrower that refinances an existing  
4.8 residential mortgage loan when the new loan does not benefit the borrower considering all  
4.9 of the circumstances, including the terms of both the new and refinanced loans, the cost  
4.10 of the new loan, the effect of the loan on current and future equity in the home, and the  
4.11 borrower's other financial and life circumstances.

4.12 A court must presume that churning has occurred if: (i) the refinanced loan was  
4.13 originated within 24 months preceding the date the new loan was originated; (ii) the  
4.14 interest rate on the new loan exceeds the interest rate of the refinanced loan; and (iii) the  
4.15 refinanced loan is not in foreclosure or in imminent risk of being in foreclosure. For  
4.16 purposes of determining whether the interest rate of the new loan exceeds the interest rate  
4.17 of the refinanced loan under the provision: (A) in the case of a new loan or a refinanced  
4.18 loan in which the interest rate may vary, the interest rate is determined based on the  
4.19 maximum interest rate allowable under the loan that could be charged during the next five  
4.20 years from the date of origination of the new loan and assuming no default or further  
4.21 default by the borrower; and (B) in the case of multiple new loans or multiple refinanced  
4.22 loans, the interest rate is determined by combining the loan balances and required  
4.23 payments. In order to rebut this presumption of churning, the residential mortgage  
4.24 originator or exempt person making the loan must demonstrate by clear and convincing  
4.25 evidence that the borrower received a substantial and definite benefit from the new loan;

4.26 (25) make, provide, or arrange for a residential mortgage loan, other than a reverse  
4.27 mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance  
4.28 with any repayment option offered pursuant to the terms of the loan will result in negative  
4.29 amortization during any six-month period;

4.30 (26) make, provide, or arrange for a residential mortgage loan all or a portion of  
4.31 the proceeds of which are used to fully or partially pay off a "special mortgage" unless  
4.32 the borrower has obtained a written certification from a counselor with a third-party  
4.33 nonprofit or governmental organization approved by the United States Department of  
4.34 Housing and Urban Development or the commissioner that the borrower has received  
4.35 counseling on the advisability of the loan transaction. The commissioner shall maintain a  
4.36 list of approved counseling programs. For purposes of this section, "special mortgage"

5.1 means a residential mortgage loan originated, subsidized, or guaranteed by or through  
 5.2 a state, tribal, or local government, or nonprofit organization, that bears one or more of  
 5.3 the following nonstandard payment terms which substantially benefit the borrower: (i)  
 5.4 payments vary with income; (ii) payments of principal or interest are not required or  
 5.5 can be deferred under specified conditions; (iii) principal or interest is forgivable under  
 5.6 specified conditions; or (iv) where no interest or an annual interest rate of two percent or  
 5.7 less is charged in connection with the loan; or

5.8 (27) whenever the residential mortgage originator informs a borrower, orally or in  
 5.9 writing, of the anticipated or actual periodic payment amount for a first-lien residential  
 5.10 mortgage loan, the residential mortgage originator must inform the borrower that an  
 5.11 additional amount will be due for taxes and insurance and, if known, disclose to the  
 5.12 borrower the amount of the anticipated or actual periodic escrow payments. A residential  
 5.13 mortgage originator need not make this disclosure concerning a refinancing loan if the  
 5.14 residential mortgage originator knows that the borrower's existing loan that is anticipated  
 5.15 to be refinanced does not have an escrow account. Compliance with federal laws requiring  
 5.16 disclosure of a periodic payment amount constitutes compliance with this paragraph but  
 5.17 only for purposes of the particular disclosure required under federal law.

5.18 Sec. 2. Minnesota Statutes 2006, section 58.13, is amended by adding a subdivision to  
 5.19 read:

5.20 Subd. 1a. **Standard of care.** A residential mortgage originator, in addition to the  
 5.21 duties imposed by other statutes or common law, shall:

5.22 (1) act with reasonable skill, care, and diligence; and

5.23 (2) act in good faith and with fair dealing in any transaction, practice, or course of  
 5.24 business in connection with any residential mortgage loan.

5.25 Sec. 3. **[58.19] CRIMINAL PENALTIES FOR GROSSLY UNSUITABLE**  
 5.26 **LOANS.**

5.27 Subdivision 1. **Definition.** For the purpose of this section, "grossly unsuitable"  
 5.28 means:

5.29 (1) a residential mortgage loan for which the borrower lacked the capacity to repay  
 5.30 the interest and principal of the loan, and the real estate taxes and home insurance on the  
 5.31 property, at the time the loan was originated; or

5.32 (2) a residential mortgage loan made as a result of a loan application that contains  
 5.33 materially false or fraudulent information as to the borrower's income, expenses, debts  
 5.34 or assets.

6.1 Subd. 2. **Acts constituting; penalties.** Any person who makes a residential  
6.2 mortgage loan, or obtains or assists in obtaining from another person for a borrower a  
6.3 residential mortgage loan, that the person knows is grossly unsuitable for the borrower  
6.4 may be fined not more than \$75,000 or imprisoned for up to two years, or both.  
6.5 Prosecution or conviction for securing grossly unsuitable loans on behalf of borrowers will  
6.6 not bar prosecution or conviction for any other offenses. These penalties are cumulative to  
6.7 any other remedies or penalties provided by law.

6.8 Subd. 3. **Additional penalty for crime against a disabled or elderly person.**  
6.9 Any person who commits the criminal offense specified in this section against a senior  
6.10 citizen or disabled person may be fined an additional \$50,000 or imprisoned for up to two  
6.11 additional years, or both. For purposes of this subdivision, "senior citizen" and "disabled  
6.12 person" have the meanings given those terms in section 325F.71, subdivision 1.

6.13 **Sec. 4. ~~82B.24~~ PRIVATE RIGHT OF ACTION.**

6.14 Subdivision 1. **Remedies.** Any person injured by a violation of the standards, duties,  
6.15 prohibitions, or requirements of section 82B.20 or 82B.22 shall have a private right of  
6.16 action and the court shall award:

- 6.17 (1) actual, incidental, and consequential damages;  
6.18 (2) statutory damages of no less than \$1,000 nor more than \$2,000; and  
6.19 (3) punitive damages as the court may allow. In determining punitive damages,  
6.20 the court should consider the severity and intentionality of the violation, the number of  
6.21 violations, and whether the violation was part of a pattern and practice of violations; and  
6.22 (4) court costs and reasonable attorneys fees.

6.23 Subd. 2. **Private attorney general statute.** A person injured by a violation of the  
6.24 standards, duties, prohibitions, or requirements of sections 58.13, 58.136, 58.137, and  
6.25 58.16 also may bring an action under section 8.31. A private right of action by a borrower  
6.26 under this chapter is in the public interest.

6.27 Subd. 3. **Remedies cumulative.** The remedies provided in this section are  
6.28 cumulative and do not restrict any other right or remedy otherwise available to the  
6.29 borrower.