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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE NO. **3477**

February 25, 2008

Authored by Gardner and Mariani

The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

March 6, 2008

Committee Recommendation and Adoption of Report:

Amended and re-referred to the Committee on Commerce and Labor without further recommendation

March 27, 2008

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to manufactured housing; providing for regulation of lending practices
1.3 and default; providing notices and remedies; amending Minnesota Statutes 2006,
1.4 sections 327.64, subdivision 2; 327.65; 327.66; 327B.01, by adding subdivisions;
1.5 327B.08, by adding a subdivision; 327B.09, by adding a subdivision; 327B.12;
1.6 proposing coding for new law in Minnesota Statutes, chapters 327; 327B.

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

1.8 Section 1. Minnesota Statutes 2006, section 327.64, subdivision 2, is amended to read:

1.9 Subd. 2. **Notice; service.** (a) A secured party may commence repossession of a
1.10 manufactured home by personally serving upon, or by sending by certified or registered
1.11 United States mail to, the occupant of the ~~mobile~~ manufactured home a notice and, if the
1.12 occupant is not the debtor, by sending a registered or certified letter to the last known
1.13 address of the debtor under the security agreement, both setting forth the circumstances
1.14 constituting the default under the security agreement and stating that the secured party
1.15 will at the expiration of a 30-day period following receipt of the notice seek a court order
1.16 removing the occupant from the manufactured home and repossessing the manufactured
1.17 home, unless the debtor or the occupant acting on behalf of the debtor cures the default
1.18 prior to that time and in the manner provided by section 327.66. If notice is mailed to a
1.19 debtor in accordance with this subdivision, the secured party by affidavit shall set forth the
1.20 circumstances causing the secured party to believe that the debtor could be reached at the
1.21 address to which the notice was mailed. The affidavit shall state that the secured party
1.22 has no ~~reason to believe~~ reliable information causing the secured party to conclude that
1.23 the debtor might receive mailed notice at another address.

1.24 (b) The notice must state: "Your loan is currently in default. Contact us immediately
1.25 at [insert phone number] to discuss possible options for preventing repossession. We

2.1 encourage you to seek assistance from the foreclosure prevention counseling program in
2.2 your area. Nearby community agencies will answer your questions, offer free advice,
2.3 and help you create a plan. You can contact the Minnesota Home Ownership Center at
2.4 (866) 462-6646 or www.hocmn.org to get the phone number and location of the nearest
2.5 foreclosure prevention organization. Call today. Waiting limits your options. If you do not
2.6 become current on your loan within 30 days, we will seek a court order repossessing the
2.7 home, and by court order you will have to vacate the home."

2.8 (c) If the debtor does not sign for the registered or certified letter containing the
2.9 notice within five calendar days of the first attempted delivery, the secured party may
2.10 proceed with all permissible actions provided in statute as though the debtor's signature
2.11 has been secured.

2.12 Sec. 2. Minnesota Statutes 2006, section 327.65, is amended to read:

2.13 **327.65 COURT ORDER.**

2.14 Except in cases of voluntary repossession, upon expiration of the 30-day period
2.15 specified in the notices required by section 327.64, a secured party must apply to the
2.16 district court in the county in which the manufactured home is located for an order
2.17 pursuant to chapter 565 directing the seizure and delivery of the manufactured home. The
2.18 application shall be accompanied by a copy of the security agreement entitling the secured
2.19 party to repossession of the manufactured home, a copy of the notices required under
2.20 sections 327.64 and 327.665, and by the an affidavit required by section 327.64 if notice is
2.21 mailed to the debtor of service stating that the notices required under sections 327.64 and
2.22 327.665 were properly served upon the occupant, and if the occupant of the home is not
2.23 the debtor, the debtor. The notices required by section sections 327.64 and 327.665 shall
2.24 not be considered as satisfying any of the notice requirements under chapter 565.

2.25 Sec. 3. **327.651 VOLUNTARY REPOSSESSION.**

2.26 The secured party and the debtor and occupant, if the debtor is not the occupant, may
2.27 agree in writing on a voluntary surrender of the title and possession of the manufactured
2.28 home to the secured party prior to or after the end of the 30-day period specified under
2.29 section 327.64. The secured party may file the agreement and any other documents
2.30 necessary to transfer the title in the manner required under chapter 336. When this
2.31 provision is exercised, notice under section 327.64, subdivision 3 is not applicable.

2.32 Sec. 4. Minnesota Statutes 2006, section 327.66, is amended to read:

2.33 **327.66 CURE OF DEFAULT.**

3.1 A debtor, or an occupant of a manufactured home acting on behalf of a debtor, may
3.2 within the 30 day period specified in the notices required by section 327.64, cure a default
3.3 by tendering full payment of the sums then in arrears under the terms of the security
3.4 agreement, or by otherwise remedying the default, and by paying the reasonable costs,
3.5 not to exceed the sum of ~~\$15~~ \$100, incurred by the secured party to enforce the security
3.6 agreement. Cure of a default in accordance with the provisions of this section shall
3.7 suspend the secured party's right to seek repossession of the manufactured home under the
3.8 provisions of sections 327.61 to 327.67.

3.9 Sec. 5. **[327.665] REINSTATEMENT.**

3.10 Subdivision 1. **Right to reinstate.** (a) If the debtor does not cure the default within
3.11 the 30-day period specified in section 327.66, the secured party must send a registered
3.12 or certified letter to the occupant of the home and, if the debtor is different than the
3.13 occupant, to the debtor, stating that the debtor has 30 days to reinstate the loan by paying
3.14 the defaulted amount plus additional allowable fees incurred by the secured party in
3.15 order to regain possession of the home.

3.16 (b) If the debtor does not sign for the registered or certified letter containing the
3.17 notice within five calendar days of the first attempted delivery, the secured party may
3.18 proceed with all permissible actions provided in statute as though the debtor's signature
3.19 had been secured.

3.20 Subd. 2. **Required notice; contents of notice.** (a) The notice shall contain, at a
3.21 minimum, the following information:

3.22 (1) the name of the secured party, the debtor, each current assignee of the loan, if
3.23 any, and the original or maximum principal amount secured by the loan;

3.24 (2) the date of the loan;

3.25 (3) the amount in arrears on the loan as of the date of the notice;

3.26 (4) a description of the manufactured home upon which the loan is secured,
3.27 conforming substantially to that contained in the loan documents;

3.28 (5) the amount of allowable fees incurred by the secured party in order to regain
3.29 possession of the home prior to the court order.

3.30 (b) The notice must also state: "Your manufactured home is currently being
3.31 repossessed. Contact us immediately at [insert phone number] to discuss possible options
3.32 for reinstating your loan. We encourage you to seek counseling with the foreclosure
3.33 prevention counselor in your area. Nearby community agencies will answer your
3.34 questions, offer free advice, and help you create a plan. You can contact the Minnesota
3.35 Home Ownership Center at 866-462-6646 or www.hocmn.org to get the phone number

4.1 and location of the nearest counseling organization. Call today. Waiting limits your
4.2 options. If you do not become current on your loan within 30 days, including any
4.3 additional fees, you will no longer be entitled to reinstate your loan. We are seeking a
4.4 court order repossessing the home, and by court order you will have to vacate the home."

4.5 Subd. 3. **Action to repossess; termination of action.** At any time after the
4.6 expiration of the 30-day period required under section 327.64, the creditor may proceed
4.7 with a court action under section 327.65, so long as the right to reinstate has not been
4.8 exercised. The exercise of the right to reinstatement in accordance with the provisions of
4.9 this section shall suspend the secured party's right to seek repossession of the manufactured
4.10 home under the provisions of sections 327.61 to 327.67 and shall immediately terminate
4.11 any court action filed pursuant to sections 327.61 to 327.67 or section 565.

4.12 Subd. 4. **Allowable costs.** For the purposes of this section, allowable costs that can
4.13 be recovered include insurance; delinquent taxes, if any, upon the premises; interest to
4.14 date of payment; cost services of process or notices; filing fees; attorney fees, not to
4.15 exceed \$150 or one-half of the attorney fees authorized by section 582.01, whichever is
4.16 greater, together with other lawful disbursements necessarily incurred in connection with
4.17 the proceedings by the party repossessing.

4.18 Sec. 6. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision
4.19 to read:

4.20 Subd. 2a. **Borrower.** "Borrower" means a person or persons applying for or
4.21 obtaining a manufactured home loan.

4.22 Sec. 7. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision
4.23 to read:

4.24 Subd. 4b. **Churning.** "Churning" means knowingly or intentionally making,
4.25 providing, or arranging for a manufactured home loan when the new manufactured home
4.26 loan does not provide a reasonable, tangible net benefit to the borrower considering all of
4.27 the circumstances, including the terms of both the new and refinanced loans, the cost of
4.28 the new loan, and the borrower's circumstances.

4.29 Sec. 8. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision
4.30 to read:

4.31 Subd. 13b. **Manufactured home loan.** "Manufactured home loan" means a loan
4.32 made to a person or persons for the purchase, refinancing, improvement, or repair of a
4.33 manufactured home.

5.1 Sec. 9. Minnesota Statutes 2006, section 327B.01, is amended by adding a subdivision
5.2 to read:

5.3 Subd. 14b. **Negative amortization.** "Negative amortization" occurs when the
5.4 borrower's compliance with any repayment option offered pursuant to the terms of the
5.5 manufactured home loan is insufficient to satisfy the interest accruing on the loan,
5.6 resulting in an increase in the loan balance. Negative amortization does not occur when a
5.7 manufactured home loan is originated, subsidized, or guaranteed by or through a state,
5.8 tribal, or local government, or nonprofit organization, and bears one or more of the
5.9 following nonstandard payment terms that substantially benefit the borrower:

5.10 (1) payments vary with income;

5.11 (2) payments of principal and interest are deferred until the maturity date of the
5.12 loan or the sale of the residence;

5.13 (3) principal or interest is forgivable under specified conditions; or

5.14 (4) where no interest or an annual interest rate of two percent or less is charged
5.15 in connection with the loan, and excludes existing loan modifications and payment
5.16 extensions mutually agreed upon by the secured party and debtor.

5.17 Sec. 10. Minnesota Statutes 2006, section 327B.08, is amended by adding a
5.18 subdivision to read:

5.19 Subd. 6. **Duty of agency.** (a) A person acting as a broker shall be considered to
5.20 have created an agency relationship with the borrower in all cases and shall comply with
5.21 the following duties:

5.22 (1) brokers shall reasonably act:

5.23 (i) in the borrower's best interest;

5.24 (ii) in the utmost good faith toward borrowers; and

5.25 (iii) so as not to compromise a borrower's right or interest in favor of another's right
5.26 or interest, including a right or interest of the broker. A broker shall not accept, give, or
5.27 charge any undisclosed compensation or realize any undisclosed remuneration, either
5.28 through direct or indirect means, that inures to the benefit of the broker on an expenditure
5.29 made for the borrower;

5.30 (2) brokers shall carry out all lawful instructions given by borrowers;

5.31 (3) brokers shall disclose to borrowers all material facts of which the broker has
5.32 knowledge which might reasonably affect the borrower's rights, interests, or ability to
5.33 receive the borrower's intended benefit from the manufactured home loan, but not facts
5.34 which are reasonably susceptible to the knowledge of the borrower;

5.35 (4) brokers shall use reasonable care in performing duties; and

6.1 (5) brokers shall account to a borrower for all the borrower's money and property
 6.2 received as an agent.

6.3 (b) The duty of agency does not attach to a broker who is:

6.4 (1) a dealer or retailer;

6.5 (2) a limited dealer or retailer;

6.6 (3) licensed as a sales finance company as defined under section 53C.01, subdivision
 6.7 12;

6.8 (4) employed by:

6.9 (i) a manufactured home lender;

6.10 (ii) a dealer or retailer;

6.11 (iii) a limited dealer or retailer; or

6.12 (iv) a licensed sales finance company as defined under section 53C.01, subdivision
 6.13 12;

6.14 (5) a person who has an exclusive contract to act as a broker for:

6.15 (i) a manufactured home lender;

6.16 (ii) a dealer or retailer;

6.17 (iii) a limited dealer or retailer; or

6.18 (iv) a licensed sales finance company as defined under section 53C.01, subdivision
 6.19 12.

6.20 (c) Nothing in this section prohibits a broker who is bound by the duty of agency
 6.21 from contracting for or collecting a reasonable fee for services rendered and which had
 6.22 been disclosed to the borrower in advance of the provision of such services.

6.23 (d) Nothing in this section requires a broker who is bound by the duty of agency to
 6.24 obtain a loan containing terms or conditions not available to the broker in the broker's
 6.25 usual course of business, or to obtain a loan for the borrower from a manufactured home
 6.26 loan lender with whom the broker does not have a business relationship.

6.27 Sec. 11. Minnesota Statutes 2006, section 327B.09, is amended by adding a subdivision
 6.28 to read:

6.29 Subd. 6. **Standards of conduct.** (a) No manufactured home lender shall:

6.30 (1) charge a fee for a product or service where the product or service is not actually
 6.31 provided, or misrepresent the amount charged by or paid to a third-party for a product
 6.32 or service;

6.33 (2) make or cause to be made, directly or indirectly, any false, deceptive, or
 6.34 misleading statement or representation in connection with a manufactured home loan
 6.35 transaction, including, without limitation, a false, deceptive, or misleading statement or

7.1 representation regarding the borrower's ability to qualify for any manufactured home
7.2 loan product;

7.3 (3) issue any document indicating conditional qualification or conditional approval
7.4 for a manufactured home loan, unless the document also clearly indicates that final
7.5 qualification or approval is not guaranteed, and may be subject to additional review;

7.6 (4) make or assist in making any manufactured home loan without verifying the
7.7 reasonable ability of the borrower to repay the loan, taking into consideration taxes and
7.8 insurance in connection with the manufactured home;

7.9 (5) make, provide, or arrange for a manufactured home loan for a higher interest rate
7.10 or on less favorable terms than the rate or terms for which the borrower qualifies based on
7.11 criteria typically used by that lender to evaluate rate and term offerings;

7.12 (6) make, provide, or arrange for a manufactured home loan all or a portion of the
7.13 proceeds of which are used to fully or partially pay off a "special loan" unless the borrower
7.14 has obtained a written certification from an authorized independent loan counselor that
7.15 the borrower has received counseling on the advisability of the loan transaction. For
7.16 the purposes of this section, "special loan" means a loan for the purchase, refinance,
7.17 improvement, or repair of the manufactured home originated, subsidized, or guaranteed
7.18 by or through a state, tribal, or local government, or nonprofit organization, that bears
7.19 one or more of the following nonstandard payment terms, which substantially benefit
7.20 the borrower:

7.21 (i) payments vary with income;

7.22 (ii) payments of principal or interest are not required or can be deferred under
7.23 specified conditions;

7.24 (iii) principal or interest is forgivable under specified conditions; or

7.25 (iv) where no interest or an annual interest rate of two percent or less is charged in
7.26 connection with the loan. For the purposes of this section, "authorized independent loan
7.27 counselor" means a nonprofit, third-party individual or organization providing homebuyer
7.28 education programs, foreclosure prevention services, loan counseling, or credit counseling
7.29 certified by the United States Department of Housing and Urban Development, the
7.30 Minnesota Home Ownership Center, the Minnesota Mortgage Foreclosure Prevention
7.31 Association, AARP, or NeighborWorks America.

7.32 (7) engage in churning; or

7.33 (8) make, provide, or arrange for a manufactured home loan if the borrower's
7.34 compliance with any repayment option offered under the terms of the loan will result in
7.35 negative amortization during any six-month period. This excludes existing loan extensions
7.36 and modifications.

8.1 (b) This subdivision does not apply to a state or federally chartered bank, savings
8.2 bank, or credit union, an institution chartered by Congress under the Farm Credit Act,
8.3 or to a person making, providing, or arranging a manufactured home loan originated or
8.4 purchased by a state agency or a tribal or local unit of government.

8.5 **Sec. 12. [327B.095] INTEREST, POINTS, FINANCE CHARGES, FEES, AND**
8.6 **OTHER CHARGES.**

8.7 **Subdivision 1. **Financed interest, points, finance charges, fees, and other****
8.8 **charges.** (a) A manufactured home lender making or modifying a manufactured home
8.9 loan to a borrower located in this state must not include in the principal amount of any
8.10 loan, all or any portion of any lender fee in an aggregate amount exceeding:

8.11 (1) five percent of the loan amount for loans over \$60,000;

8.12 (2) six percent of the loan amount for loans less than \$60,000, but greater than or
8.13 equal to \$40,000; or

8.14 (3) eight percent of the loan amount for loans of less than \$40,000.

8.15 (b) "Lender fee" means interest, origination points, finance charges, fees, and other
8.16 charges payable in connection with the manufactured home loan:

8.17 (1) by the borrower to any manufactured home lender or broker or to any assignee of
8.18 any manufactured home lender or broker; or

8.19 (2) by the lender to a broker.

8.20 (c) Lender fee does not include discount points, provided there is a concomitant
8.21 benefit to the borrower, recording fees, taxes, passthroughs, or other amounts that are paid
8.22 by any person to any government entity, filing office, or other third party that is not a
8.23 manufactured home lender or broker or to any assignee of any manufactured home lender
8.24 or broker. Lender fee also does not include any amount that is set aside to pay taxes or
8.25 insurance on any property securing the manufactured home loan.

8.26 (d) "Loan amount" means:

8.27 (1) for a line of credit, the maximum principal amount of the line of credit; and

8.28 (2) for any other manufactured home loan, the principal amount of the loan,
8.29 excluding all interest, points, finance charges, fees, and other charges.

8.30 (e) A manufactured home lender or broker shall not charge, receive, or collect any
8.31 excess financed interest, points, finance charges, fees, or other charges described in this
8.32 subdivision, or any interest, points, finance charges, fees, or other charges with respect
8.33 to this excess.

8.34 **Subd. 2. **Prepayment penalties.**** No manufactured home loan may contain a
8.35 provision requiring or permitting the imposition of a penalty, fee, premium, or other

9.1 charge in the event the manufactured home loan is prepaid in whole or in part unless the
9.2 penalty, fee, premium, or other charge constitutes consideration for an equal or greater
9.3 benefit to the borrower.

9.4 Subd. 3. **Exemption.** This section does not apply to a manufactured home loan
9.5 originated by a federal or state chartered bank, savings bank, or credit union.

9.6 Sec. 13. Minnesota Statutes 2006, section 327B.12, is amended to read:

9.7 **327B.12 ADDITIONAL REMEDIES AND ENFORCEMENT.**

9.8 Subdivision 1. **Private remedies.** (a) Any person injured or threatened with injury
9.9 by a dealer or manufacturer's violation of sections 327B.01 to 327B.12 may bring a private
9.10 action in any court of competent jurisdiction.

9.11 (b) A borrower injured by a violation of the standards, duties, prohibitions, or
9.12 requirements of sections 327B.08, subdivision 6; 325B.09, subdivision 6; or 325B.095,
9.13 shall have a private right of action and the court shall award actual, incidental, and
9.14 consequential damages.

9.15 Subd. 2. **Fraud remedies.** In addition to the remedies provided in sections 327B.01
9.16 to 327B.12, any violation of section 327B.08 or 327B.09 is a violation of section 325F.69,
9.17 subdivision 1 and the provisions of section 8.31 shall apply. A private right of action by
9.18 the borrower under this chapter is in the public interest.

9.19 Subd. 3. **Application to certain lenders.** A lender who is licensed as a sales finance
9.20 company as defined under section 53C.01, subdivision 12, and who violates the standards,
9.21 duties, prohibitions, or requirements of sections 327B.08, subdivision 6; 325B.09,
9.22 subdivision 6; or 325B.095, is subject only to the remedies provided under section 53C.12.