

HOUSE RESEARCH

Bill Summary

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Overview

This bill contains several provisions designed to reduce predatory lending. "Predatory lending" is the term used to refer to residential mortgage lending practices that are considered harmful to the borrower.

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1 **Generally.** The new clause (23) prohibits a lender from making a mortgage loan, unless the lender has determined that the borrower has a reasonable ability to make the loan payments. Specifies how the lender is required to do that.

The new clause (24) prohibits "churning," which is defined as making a new loan to refinance an existing loan when the new loan does not benefit the borrower, considering all of the circumstances. States some of the circumstances to be considered. Specifies the circumstances in which a court must presume that churning has occurred. States how the lender may rebut that presumption.

The new clause (25) prohibits mortgage loans, other than reverse mortgages, that could result in negative amortization. Negative amortization is when the monthly payment is less than the interest, leading to the balance owing on the loan increasing rather than decreasing over time.

The new clause (26) prohibits a lender from making a new mortgage loan to refinance a "special mortgage" unless the borrower has received qualified mortgage counseling on

Section

whether that is a good idea. A "special mortgage" is a mortgage loan that the borrower obtained from a government or nonprofit entity and that contains favorable terms for the borrower such as payments that vary with income, subsidized interest rate, or other features listed in the bill.

The new clause (27) requires the lender, when informing a prospective borrower of the monthly payment on a first-lien mortgage loan, to also tell the borrower that additional amounts for property taxes and homeowner's insurance will also be payable monthly. Exempts situations in which the borrower has an existing loan that does not have an escrow account. States how this disclosure requirement relates to a related federal requirement.

2 Standard of care. Creates a standard of care that mortgage lenders owe to their customers, consisting of doing a good job for the borrower and acting in good faith and with fair dealing.

3 Criminal penalties for grossly unsuitable loans.

Subd. 1. Definition. Defines "grossly unsuitable" in the context of making a mortgage loan as a loan that the borrower could not afford at the time the loan was made or a loan made as a result of information on a loan application that is materially false or fraudulent regarding the borrower's ability to pay. (Apparently this refers to information put on the application by the lender or mortgage broker and not by the borrower.)

Subd. 2. Acts constituting; penalties. Creates a specific felony of making or assisting in making a grossly unsuitable mortgage loan. Provides that conviction of this crime does not bar prosecution or conviction for other (presumably related) crimes. Provides that the criminal penalties for this crime are cumulative to other penalties.

Subd. 3. Additional penalty for crimes against a disabled or elderly person. Adds an extra penalty for committing the crime in subdivision 2 against a disabled person or senior citizen.

4 Private right of action.

Subd. 1. Remedies. Creates a private cause of action against real estate appraisers who violate certain laws that regulate them, one of which is accepting an appraisal assignment contingent on the appraiser determining that the appraised value is at least a specified dollar amount. Permits recovering several types of damages, including punitive damages, plus attorney fees.

Subd. 2. Private attorney general statute. Provides a private cause of action for persons harmed by various violations of the state laws governing mortgager lending.

Subd. 3. Remedies cumulative. Says that this section does not adversely affect any other rights of a borrower.