

Chapter 20
Tennessee Home Loan Protection Act

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45-20-101. Short title. —

This chapter shall be known and may be cited as the “Tennessee Home Loan Protection Act.”

[Acts 2006, ch. 801, § 1.]

45-20-102. Chapter definitions. —

As used in this chapter, unless the context otherwise requires:

(1) “Affiliate” means any company that controls, is controlled by, or is under common control with another company, as set forth in the federal Bank Holding Company Act of 1956, compiled in 12 U.S.C. § 1841 et seq., and the regulations promulgated pursuant to that act;

(2) “Annual percentage rate” means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act, compiled in 15 U.S.C. § 1601 et seq., and the regulations, including official staff commentary, promulgated pursuant to that act, by the board of governors of the federal reserve system;

(3) “Bona fide loan discount points” means loan discount points actually paid by the borrower to the lender for the purpose of reducing, and that in fact result in a bona fide reduction of, the interest rate applicable to the loan by a minimum of twenty-five (25) basis points per discount point;

(4) “Borrower” means a natural person obligated to pay a home loan, including a co-borrower;

(5) “Commissioner” means the commissioner of financial institutions;

(6) “Construction loan” means a loan for the initial construction of a borrower's principal dwelling on land owned by the borrower, with a maturity of less than eighteen (18) months, that only requires the payment of interest until the time that the entire unpaid balance is due and payable, or a fee in lieu of interest;

(7) “Department” means the department of financial institutions;

(8) “High-cost home loan” means a home loan in which the terms of the loan meet or exceed the rate threshold or the total points and fees threshold;

(9) “Home loan” means a loan in which:

(A) The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association, or three hundred fifty thousand dollars (\$350,000);

(B) The debt is incurred primarily for personal, family, or household purposes;

(C) The loan is secured by a mortgage or deed of trust on real estate in this state, upon which there is located or there is to be located a structure:

(i) Designed principally for occupancy by one (1) to four (4) families; and

(ii) That is or will be occupied by a borrower as the borrower's principal dwelling; and

(D) “Home loan” does not include:

(i) Any residential mortgage transaction as defined in 12 CFR 226.2(a)(24);

(ii) An open-end credit loan as defined in section 12 CFR 226.2(a)(20), and as used in the official staff commentary of the board of governors of the federal reserve system, except as provided in § [45-20-106](#);

(iii) A reverse mortgage transaction, as defined in title [47](#), chapter 30;

(iv) A construction loan; and

(v) Any loan that is insured or guaranteed by, securitized for, or sold to a government agency, including the department of housing and urban development, the department of veteran affairs, the Tennessee housing development agency, or the United States department of agriculture;

(10) “Lender” means “lender” as defined in 24 CFR 3500.2. “Lender” also means a “mortgage loan broker” as defined in § [45-13-102](#);

(11) “Person” means any individual, corporation, partnership, trust, or any other business unit or legal entity, as the context may require;

(12) (A) “Points and fees” means as defined in 12 CFR 226.32, and as used in the official staff commentary of the board of governors of the federal reserve system;

(B) “Points and fees” shall exclude up to and including two (2) bona fide loan discount points; and

(C) “Points and fees” shall not include charges for all items listed in 12 CFR

226.4(c)(7), as provided in 12 CFR 226.32(b)(1)(iii), where the charges are paid to an affiliate of the lender and the amount is reasonably consistent with amounts charged for comparable services by a party not affiliated with the lender at the time the loan is made; provided, however, that only the amount of the charge that exceeds the charge for comparable items shall be included within the term “points and fees”;

(13) “Principal loan amount” is the total amount of money paid to, received by, or credited to the account of the borrower on which interest is to be computed;

(14) “Rate threshold” means that the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a mortgage pursuant to § 152 of the Home Ownership Equity Protection Act of 1994, codified as 15 U.S.C. § 1602(aa), and the regulations adopted pursuant to 15 U.S.C. § 1602(aa) by the federal reserve system, including 12 CFR 226.32, and as used in the official staff commentary of the board of governors of the federal reserve system;

(15) “Servicer” means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a high-cost home loan;

(16) “Total loan amount” means the term as defined in 12 CFR 226.32 and as used in the official staff commentary of the board of governors of the federal reserve system; and

(17) “Total points and fees threshold” means the total points and fees payable by the borrower at or before the loan closing that exceed:

(A) The greater of five percent (5%) of the total loan amount or two thousand four hundred dollars (\$2,400), if the total loan amount is more than thirty thousand dollars (\$30,000); or

(B) Eight percent (8%) of the total loan amount, if the total loan amount is thirty thousand dollars (\$30,000) or less.

[Acts 2006, ch. 801, § 2.]

45-20-103. Prohibited acts and practices. —

The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lender shall recommend or encourage default or skipping a payment on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt;

(2) (A) A lender or servicer of a high-cost home loan shall provide a borrower or the borrower's designated agent, upon request, two (2) pay-off statements within any twelve-month period, free of charge. The statement shall be valid for a minimum of fifteen (15) days;

(B) The lender may require that any request for a pay-off statement be sent in writing, by facsimile, or other electronic means, to a designated address or location, and contain sufficient information to identify the loan, including the name of the borrower as listed on the loan documents and the loan number;

(C) A request for a pay-off statement sent to the location designated by the lender or servicer shall be provided within five (5) business days after an authorized request, plus any required fee, is received by the lender; and

(D) A lender or servicer may charge a reasonable fee for any additional requests for a pay-off statement during the twelve-month period;

(3) No lender or servicer shall charge a fee to provide a release upon prepayment of a high-cost home loan, except for the actual cost paid to record the release;

(4) No lender shall knowingly or intentionally make a high-cost home loan that refinances, within thirty (30) months, an existing home loan or high-cost home loan of the borrower, when the new loan does not have a reasonable benefit to the borrower,

considering all the circumstances, including the terms of both the new and refinanced loans, the economic and noneconomic circumstances, the cost of the new loan, and the borrower's circumstances;

(5) (A) No lender shall make a high-cost home loan that finances, directly or indirectly, any single premium credit life insurance, as defined in § [56-7-904](#), credit accident, credit disability, credit unemployment, credit property or health insurance, any other credit insurance product, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, unless the total benefits payable under all of the policies or contracts issued in connection with the loan do not exceed fifty thousand dollars (\$50,000), the principal amount of financed premiums for the policy or contract are repayable during the term of the policy or contract, and the amount payable under the credit life insurance policy are not at any time during the term of the loan more than one hundred three percent (103%) of the then unamortized principal balance of the loan.

(B) Nothing in this subdivision (5) prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis, or prohibits bona fide credit property insurance required by the federal housing administration or the United States department of agriculture to be paid in a single premium to the respective federal agency.

(C) As used in this subdivision (5), “credit property insurance” means property insurance written in connection with credit transactions under which the lender is the primary beneficiary;

(6) (A) A lender may not make a high-cost home loan, unless the lender reasonably believes at the time the loan is made that one (1) or more of the borrowers, when considered individually or collectively, will be able to make scheduled payments to repay the obligation, based upon consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the dwelling that secures repayment of the loan;

(B) A borrower shall be deemed to be able to make the scheduled payments to repay the high-cost home loan, if, at the time the loan is consummated, the borrower's total monthly debts, as identified on the borrower's credit report and as computed by the lender's underwriting guidelines and methodology, including amounts owed under the

loan, do not exceed fifty percent (50%) of the borrower's monthly gross income:

(i) As verified by the credit application, the borrower's financial statements, tax returns, payroll receipts or third party income verification; and,

(ii) As underwritten in accordance with the lender's underwriting guidelines and methodology; and

(C) No presumption of inability to make the scheduled payments to repay the high-cost home loan shall arise solely from the fact that, at the time the loan is consummated, the borrower's total monthly debts, including amounts owed under the loan, exceed fifty percent (50%) of the borrower's monthly gross income;

(7) No lender may directly or indirectly finance, in connection with any high-cost home loan, any points and fees in excess of an amount that is the greater of three percent (3%) of the total loan amount or one thousand five hundred dollars (\$1,500), if the total loan amount is more than thirty thousand dollars (\$30,000), or an amount equal to five percent (5%) of the total loan amount, if the total loan amount is thirty thousand dollars (\$30,000) or less; provided, however, that registrants under chapter 5 of this title may finance as points and fees an amount not to exceed the charges allowed pursuant to § [45-5-403\(a\)\(1\)\(A\)](#) on loans made under the provisions of chapter 5 of this title;

(8) A lender may not charge a borrower points and fees 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 with the same lender or affiliate of the lender; provided, however, that this subdivision (8) shall not prohibit a lender from charging points and fees in connection with any additional proceeds received by the borrower in connection with the refinancing. For purposes of this subdivision (8), additional proceeds shall be defined as the amount over and above the amount required to pay off the existing high-cost home loan;

(9) (A) No prepayment fees or penalties shall be provided in the loan documents for a high-cost home loan, or charged a borrower, that exceed, in aggregate, two percent (2%) of the loan amount prepaid in the first twenty-four (24) months following the loan closing;

(B) No prepayment fees or penalties shall be provided in the loan documents or charged a borrower in a refinancing of a high-cost home loan, if the lender or an affiliate of the lender is the note holder of the note being refinanced; and

(C) Any refund method not permitted under 12 CFR 226.32(d)(6) and (d)(7) shall be prohibited;

(10) No lender shall make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of the earlier scheduled payments. This subdivision (10) does not apply when the payment schedule is adjusted to the seasonal or irregular income of a borrower;

(11) No lender shall make a high-cost home loan that contains a payment schedule with regular periodic payments that cause the principal balance to increase;

(12) No lender shall make a high-cost home loan that contains a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This subdivision (12) does not apply when repayment of the loan has been accelerated by default in the terms of the note or deed of trust;

(13) No lender shall make a high-cost home loan that includes terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;

(14) No lender shall make a high-cost home loan that contains a provision that increases the interest rate after default. This subdivision (14) does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents; provided, that the change in the interest rate is not triggered by the event of default or acceleration of the indebtedness;

(15) No lender shall make a high-cost home loan that provides for a late payment

fee, except as follows:

(A) The late payment fee shall not be in excess of five percent (5%) of the amount of the payment past due or fifteen dollars (\$15.00), whichever is greater;

(B) The late payment fee shall only be assessed for a payment past due for ten (10) days or more; and

(C) The late payment fee shall not be imposed more than once with respect to a single late payment; and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment, but for the previous default or the imposition of the previous late payment fee;

(16) A lender shall not make a high-cost home loan unless the lender has given the following written notice, in at least twelve (12) point bold type, to the borrower, acknowledged in writing and signed by the borrower, not later than the time the notice provided by 12 CFR 226.31(c) is required:

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) MAINTAINS A LIST OF CREDIT COUNSELORS IN YOUR AREA. YOU MAY OBTAIN HUD'S LIST OF CREDIT COUNSELORS BY CONTACTING HUD DIRECTLY OR BY CONTACTING THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING LENDERS;

(17) (A) A lender may not present a borrower with a high-cost home loan at closing with a materially different interest rate, term, type of loan, or settlement charges from the settlement charges disclosed on the last disclosures required by the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq., without redisclosure not less than one (1) day before closing. "Materially different settlement charges" means that the total settlement charges disclosed on the final settlement statement would exceed the previously last disclosed settlement charges by an amount equal to more than fifteen percent (15%) in the aggregate; and

(B) A high-cost home loan may not be closed in a location other than an office of the lender, at the office of any attorney at law licensed to practice in Tennessee, at the office of a title insurance company or title insurance agency licensed to do business in Tennessee, the office of a settlement or closing agent, or the commercial office of a mortgage broker;

(18) A lender or its servicer shall report, at least quarterly, both the favorable and

unfavorable payment history information of the borrower on payments due to the lender on a high-cost home loan to a nationally recognized consumer credit reporting agency;

(19) (A) Each mortgage or deed of trust securing a high-cost home loan shall state on the face of the instrument the following legend prominently displayed: “This instrument secures a high-cost home loan, as defined in Tennessee Code Annotated, Title 45.”; and

(B) Each note that meets the definition of a high-cost loan as defined in this chapter shall state on the face of the instrument the following legend prominently displayed: “This instrument is a high-cost home loan, as defined in Tennessee Code Annotated, Title 45.”;

(20) (A) No lender, in connection with a high-cost home loan, shall encourage or solicit any person to execute any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document for a high-cost home loan, if any material terms of the loan or transaction, including, but not limited to, the duration, interest rate, or fees, are omitted or incomplete;

(B) No person, in connection with a high-cost home loan, shall modify, including, but not limited to, any alteration or change, any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document, after the execution of the document, unless the modification is with the consent of the person or persons affected by the change and the consent is in writing, or the modification is authorized by a valid power of attorney authorizing the modification. A power of attorney is valid for this purpose, if it specifically includes the type or nature of the modification; and

(C) No person, in connection with a high-cost home loan, shall encourage, solicit, or conspire with any other person to violate this section; and

(21) A lender may not make a high-cost home loan without first providing to the borrower, in a separate document clearly identified, notice of availability of counselors from third-party nonprofit organizations approved by the United States department of housing and urban development (HUD), a housing financing agency of this state, or the

regulatory agency that has jurisdiction over the lender. The document shall provide either a list of counselors who are located in the county of the borrower or the nearest available county where counselors are available; or a resource list for HUD, Tennessee housing and development agency or the Tennessee department of financial institutions, including toll-free numbers and web site information, if available, to identify the counselors. The borrower shall be afforded the opportunity to seek counseling without penalty. For purposes of this section, this document shall be provided to the borrower not later than the time that the good faith estimate of closing costs required by the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq., must be provided to the borrower.

[Acts 2006, ch. 801, § 3.]

45-20-104. Cure of default — Foreclosure. —

(a) If a lender or servicer asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument of a high-cost home loan, the borrower, or anyone authorized to act on the borrower's behalf, shall have the right at any time, prior to three (3) business days prior to a foreclosure sale, to cure the default and reinstate the home loan by tendering the amount or performance. Cure of default 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) Not less than thirty (30) days prior to publishing notice of foreclosure as provided in § [35-5-104](#), or commencing an action for judicial foreclosure, a notice of the right to cure the default shall be sent to the borrower informing the borrower of the following:

(1) 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. 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, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the thirty-day period;

(2) 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 sent, and the name and address and telephone number of a person to whom the payment or tender shall be made;

(3) That if the borrower does not cure the default by the date specified, steps may be taken 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

(4) The name and address of the lender or servicer and the telephone number of a representative of the person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

(c) To cure a default under this section, 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. During the cure period, the borrower shall be liable for any expenses actually incurred to preserve, maintain, or protect the property or the security interest of the lender that are otherwise permitted in the note or deed of trust, or other loan documents. After a lender publicly files a notice of foreclosure or takes other action to seize or transfer ownership of the home, the borrower shall be liable for attorney's fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours and reasonable cost for publishing notice of and conducting the foreclosure sale.

(d) A borrower's right to cure a default prior to commencing a foreclosure proceeding under this section may not be invoked more than once in any twelve-month period.

[Acts 2006, ch. 801, § 4.]

45-20-105. Purchaser or assignee of loan subject to all claims and defenses of the borrower — Relief granted — Due diligence. —

(a) Notwithstanding any other provision of law, 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 high-cost home loan that the borrower could assert against the lender of the high-cost home loan, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that the purchaser or assignee exercised due diligence at

the time of the purchase of the high-cost home loans, or within a reasonable time thereafter, intended to prevent the purchaser or assignee from purchasing or taking assignment of a high-cost home loan that violates the provisions of this chapter.

(b) The relief granted in an action, pursuant to subsection (a):

(1) May be asserted by the borrower acting only in an individual capacity;

(2) May not exceed the sum of the amount required to reduce the borrower's liability, so that it is no longer a high-cost home loan, plus the amount required to recover costs, including reasonable attorney's fees;

(3) May be asserted by the borrower of a high-cost home loan after notice of acceleration or foreclosure of the high-cost home loan, asserting a violation of § [45-20-103](#) in an individual action to enjoin foreclosure, or to preserve or obtain possession of the home secured by the high-cost home loan; and

(4) Shall be brought within three (3) years from the date of the occurrence of the violation; provided, however, that a borrower shall not be barred from asserting a violation of § [45-20-103](#) in an action to collect the debt that was brought more than one (1) year from the date of the occurrence of the violation, as a matter of defense by recoupment or set-off in the action, except as otherwise provided by law.

(c) This section shall not apply if a purchaser or assignee has exercised due diligence by demonstrating that the purchaser or assignee:

(1) Has in place, at the time of the purchase or assignment of the loans, policies that expressly prohibit the purchase or acceptance of assignment, by the purchaser or assignee, of any high-cost home loan containing violations;

(2) Requires, by the applicable purchase contract, that a seller or assignor of the loans to the purchaser or assignee represents and warrants to the purchaser or assignee,

as of the applicable sale date, that either:

(A) The seller or assignor will not sell or assign to the purchaser or assignee any high-cost home loan containing violations; or

(B) The seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect, and, as a result of its purchase of the loans, the purchaser or assignee is a beneficiary of the representation and warranty; and

(C) Exercises reasonable due diligence, at or before the time of the purchase or assignment of home loans, or within a reasonable period of time after the purchase or assignment of the home loans, that is intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loan containing violations.

(d) The reasonable due diligence requirement referred to in subdivision (c)(2)(C) may be met by employing lender's quality control sampling methodology and shall not require loan-by-loan review, for purposes of this subsection (d).

[Acts 2006, ch. 801, § 5.]

**45-20-106. Actions prohibited to avoid application or provisions of chapter —
Open-end credit plan. —**

(a) No person shall, with the intent to avoid the application or provisions of this chapter:

(1) Divide a loan transaction into separate parts;

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

(3) Engage in any other subterfuge.

(b) For purposes of this section, “open-end credit plan” means “open-end loan” as defined in 12 CFR 226.2(a)(20), and as used in the official staff commentary of the board of governors of the federal reserve system.

(c) For open-end credit plan, “points and fees” means “points and fees” as defined in 12 CFR 226.32, and as used in the official staff commentary of the board of governors of the federal reserve system that are known at or before closing, plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

[Acts 2006, ch. 801, § 6.]

45-20-107. Penalties — Punitive damages — Remedies — Limitations — Frivolous or harassment actions — Notice of action. —

(a) Except as provided in § [45-20-108](#), any lender found by a preponderance of the evidence to have violated this chapter shall be subject to the following:

(1) The making of a high-cost home loan that violates one (1) or more of the provisions found in § [45-20-103](#)(1), (4)-(14), (16), (17), or (19)-(21), or § [45-20-106](#) is subject to the following penalties:

(A) Actual damages;

(B) For willful or intentional violations, statutory damages equal to the amount of all finance charges and fees paid by the borrower and forfeiture of the remaining interest under the loan; and

(C) Costs and reasonable attorney's fees.

(2) The collecting or servicing of a high-cost home loan that violates one (1) or more of the provisions in § [45-20-103](#)(2), (3), (15), or (18), § [45-20-104](#), or § [45-20-106](#) is subject to the following penalties:

(A) Actual damages;

(B) For willful or intentional violations, statutory damages equal to the amount of all finance charges and fees paid by the borrower; and

(C) Costs and reasonable attorney's fees.

(b) Punitive damages may be awarded where the court finds that the violation is malicious or reckless. Punitive damages shall be limited to three (3) times the actual damages and the amount of all finance charges and fees paid by the borrower, exclusive of costs and reasonable attorney's fees.

(c) The loan may be reformed to effect the remedies provided in this section.

(d) The remedies provided in this section are not exclusive and are in addition to any other remedies available to a borrower under applicable law.

(e) Any action under this section shall be brought within three (3) years from the date the borrower discovered or should have discovered the violation. This subsection (e) does not bar a borrower from asserting a violation of this chapter as a defense in an action to collect the debt that was brought more than three (3) years from the date of occurrence of the violation as a matter of defense by recoupment or set-off in the action.

(f) In any action under this section, upon finding that the action is frivolous or brought for the purpose of harassment, the court may require the borrower instituting the action to indemnify the defendant for reasonable attorney's fees and costs. To assert a claim

under this section, the lender or servicer shall file a motion with the court and provide at least fifteen (15) days after service in which the borrower may respond to deny, withdraw, or amend the complaint.

(g) In any action under this section, notice of the action by copy shall be filed simultaneously with the department of financial institutions.

[Acts 2006, ch. 801, § 7.]

45-20-108. Compliance failure. —

(a) A lender or servicer, as applicable, of a high-cost home loan who, when acting in good faith, fails to comply with § [45-20-103](#), § [45-20-104](#), or § [45-20-106](#) shall not be deemed to have violated the section, if the lender or servicer establishes that either:

(1) Within thirty (30) days of discovery and prior to the institution of any action under this chapter:

(A) The borrower is notified of the compliance failure;

(B) The lender or servicer has made appropriate restitution to the borrower;

(C) With respect to the violations identified in § [45-20-107\(a\)\(1\)](#), the lender or servicer makes whatever adjustments are necessary to the loan to either, at the choice of the borrower, make the loan satisfy the requirements of § [45-20-103](#), or 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 chapter; and

(D) With respect to the violations identified in § [45-20-107\(a\)\(2\)](#), the lender or servicer makes whatever adjustments or refunds and/or takes action necessary to cure the violation, by affording the borrower the rights and benefits provided under the provisions of this chapter.

(2) The compliance failure was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid the errors, and within sixty (60) days after the discovery of the compliance failure and prior to the institution of any action under this chapter or the receipt of written notice of the compliance failure:

(A) The borrower is notified of the compliance error;

(B) The lender makes appropriate restitution to the borrower;

(C) With respect to the violations identified in § [45-20-107\(a\)\(1\)](#), the lender or servicer makes whatever adjustments are necessary to the loan to either, at the choice of the borrower, make the loan satisfy the requirements of § [45-20-103](#), or 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 chapter; and

(D) With respect to the violations identified in § [45-20-107\(a\)\(2\)](#), the lender or servicer makes whatever adjustments or refunds and/or takes action necessary to cure the violation, by affording the borrower the rights and benefits provided under the provisions of this chapter.

(b) Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors.

(c) For purposes of this section, “appropriate restitution” means the reimbursement by the lender of any points and fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as the borrower would have been had the loan, as adjusted, in accordance with subdivisions (a)(1) and (2), been originally made.

[Acts 2006, ch. 801, § 8.]

45-20-109. Commissioner's powers — Rules and regulations — Examinations and investigations — Injunctions. —

(a) The commissioner is granted the power to interpret the provisions of this chapter and to enact reasonable substantive and procedural rules as are necessary and proper for the administration, enforcement and interpretation of the provisions of this chapter.

(b) (1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the commissioner may conduct examinations and investigations of the business and the books, accounts, records and files used in the business of each person subject to the regulatory jurisdiction of the commissioner, or of each person that the commissioner reasonably suspects to be subject to the regulatory jurisdiction of the commissioner. For purposes of defraying the examination and investigation expenses incurred by the commissioner in the enforcement of this chapter, the commissioner shall recover the actual costs for the examination and investigation from the person.

(2) The commissioner has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths and examine any person under oath in connection with the enforcement of the provisions of this chapter.

(3) If, after notice and opportunity for a hearing, the commissioner determines that a person has violated the provisions of this chapter, or any administrative rule issued pursuant to this chapter, the commissioner may take any or all of the following actions:

(A) Order the person to cease and desist violating this chapter or any administrative rules issued pursuant to this chapter;

(B) Order a person to make restitution for actual damages to borrowers;

(C) Impose a civil penalty of up to ten thousand dollars (\$10,000) for each violation;

(D) Suspend, revoke, or refuse to renew any license or registration issued by the commissioner;

(E) Censure, suspend or bar an individual responsible for a violation of this chapter, or any administrative rule issued pursuant to this chapter, from any position of management, control, employment or other capacity related to activities regulated by the commissioner;

(F) Pending completion of an investigation or any formal proceeding instituted pursuant to this chapter, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, enter an emergency order to be effective immediately and until entry of a final order. The emergency order may include: a temporary suspension of the lender's authority to make high-cost home loans under this chapter, a temporary cease and desist order, a temporary prohibition against a lender transacting high-cost home loan business in this state, or another order relating to high-cost home loans that the commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding. In cases requiring immediate action, the commissioner shall promptly afford a subsequent hearing upon application to rescind the action taken; or

(G) Impose other conditions that the commissioner deems appropriate.

(c) In the event a person does not comply with an order or subpoena for documents or testimony issued pursuant to this chapter, the commissioner may petition a chancery court having jurisdiction to seek injunctive relief to compel compliance with the order. The power is conferred and the duty is imposed upon the several chancery courts, in all proper cases, to award injunctive relief; provided, that the order issued by the commissioner shall not be reviewable in a proceeding initiated under this subsection (c).

(d) The commissioner may bring an action in the chancery court of Davidson County to enjoin any act or practice in or from this state that constitutes a violation of this chapter, or any administrative rule issued pursuant to this chapter. The court may not require the commissioner to post a bond in bringing the action. Upon a proper showing by the commissioner, the court shall grant a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement, or other proper equitable relief, including the recovery by the commissioner of costs and attorney's fees.

(e) The provisions of this section shall not limit the authority of the attorney general and reporter from instituting or maintaining any action within the scope of the attorney general and reporter's authority with respect to practices prohibited under this chapter.

[Acts 2006, ch. 801, § 9.]

45-20-110. Restrictions on local regulation. —

All counties, municipalities, or political subdivisions of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial and lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending practices, interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the department of financial institutions, including activities subject to this chapter;

(2) Are subject to the jurisdiction of the office of thrift supervision, the office of the comptroller of the currency, the national credit union administration, the federal deposit insurance corporation, the federal trade commission, or the United States department of housing and urban development;

(3) Originate, purchase, sell, buy, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivisions (1) or (2) to assist or facilitate the transactions; or

(4) Are chartered by the United States congress to engage in secondary market mortgage transactions.

[Acts 2006, ch. 801, § 12.]

45-20-111. Application. —

The provisions of this chapter shall apply to all high-cost home loans applied for and closed on or after January 1, 2007; provided, that this chapter shall not apply to the extent it is preempted by, or is in conflict with or inconsistent with the National Bank Act, 12 U.S.C. § 21 et seq., the Homeowner's Loan Act, 12 U.S.C. § 1464 et seq., the Federal Credit Union Act, 12 U.S.C. § 1751 et seq., or regulations issued by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation or the federal credit union administration, and as interpreted by the federal courts, to national or state banks or trust companies, federal or state savings institutions, federal or state credit unions, or the operating subsidiaries of any of those.

[Acts 2006, ch. 801, § 13.]