

By: Shapleigh

S.B. No. 617

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain lending practices in connection with a home
3 loan.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter A, Chapter 343, Finance Code, is
6 amended by adding Sections 343.004 and 343.005 to read as follows:

7 Sec. 343.004. PROHIBITED SUBTERFUGE. A person may not
8 intentionally attempt to avoid the application of this chapter by
9 dividing a loan transaction into separate parts for that purpose,
10 by structuring a loan transaction as an open-end credit plan for
11 that purpose, or by any other subterfuge.

12 Sec. 343.005. DECEPTIVE TRADE PRACTICE. A violation of
13 this chapter is a deceptive trade practice under Subchapter E,
14 Chapter 17, Business & Commerce Code.

15 SECTION 2. Subchapter B, Chapter 343, Finance Code, is
16 amended by adding Sections 343.105 and 343.106 to read as follows:

17 Sec. 343.105. FALSE, MISLEADING, OR DECEPTIVE STATEMENT OR
18 REPRESENTATION. A lender may not make or cause to be made, directly
19 or indirectly, a false, deceptive, or misleading statement or
20 representation in connection with a home loan. A statement or
21 representation is deceptive or misleading if it has the capacity or
22 tendency to deceive or mislead a borrower or potential borrower,
23 considering:

24 (1) the overall impression that the statement or

1 representation reasonably creates; and

2 (2) the particular type of audience to which the
3 statement or representation is directed and whether the statement
4 or representation may be reasonably comprehended by that audience.

5 Sec. 343.106. ACCELERATION PROHIBITED. A lender may not
6 include in a home loan a provision that permits the lender, in the
7 lender's sole discretion, to accelerate the indebtedness.

8 SECTION 3. Section 343.202, Finance Code, is amended to
9 read as follows:

10 Sec. 343.202. BALLOON PAYMENT. A high-cost home loan may
11 not contain a provision for a scheduled payment that is more than
12 twice as large as the average of earlier scheduled monthly
13 payments, unless the balloon payment becomes due not less than 15
14 years [~~60 months~~] after the date of the loan. This prohibition does
15 not apply if the payment schedule is adjusted to account for the
16 seasonal or otherwise irregular income of the borrower or if the
17 loan is a bridge loan in connection with the acquisition or
18 construction of a dwelling intended to become the borrower's
19 principal dwelling.

20 SECTION 4. Subchapter C, Chapter 343, Finance Code, is
21 amended by adding Section 343.207 to read as follows:

22 Sec. 343.207. GOOD FAITH VIOLATION. (a) A lender of a
23 high-cost home loan who acts in good faith but does not comply with
24 this subchapter does not violate this subchapter if the lender
25 establishes that, before the deadline provided by Subsection (b) or
26 (c), the lender notifies the borrower of the failure to comply,
27 makes appropriate restitution, and adjusts the terms of the loan,

1 at the borrower's option, to make the loan:

2 (1) comply with this subchapter; or

3 (2) no longer be a high-cost home loan.

4 (b) Except as provided by Subsection (c), the lender must
5 take the action required by Subsection (a) not later than the 30th
6 day after the date the loan is closed and before institution of an
7 action relating to the failure to comply.

8 (c) If the failure to comply is not intentional and results
9 from a bona fide error, notwithstanding the maintenance by the
10 lender of procedures reasonably designed to avoid such an error,
11 the lender must take the action required by Subsection (a) not later
12 than the 90th day after the date of the discovery of the failure to
13 comply and before the institution of an action relating to the
14 failure to comply or receipt by the lender of written notice of the
15 failure to comply.

16 (d) For the purposes of this section, a bona fide error:

17 (1) includes a clerical or computational error,
18 computer hardware or programming malfunction, or printing error;
19 and

20 (2) does not include an error of legal judgment with
21 respect to a lender's obligations under this subchapter.

22 SECTION 5. The change in law made by this Act applies only
23 to a loan closed on or after the effective date of this Act. A loan
24 closed before the effective date of this Act is governed by the law
25 in effect when the loan is closed, and the former law is continued
26 in effect for that purpose.

27 SECTION 6. This Act takes effect September 1, 2005.