Act Number:	09-207	
Bill Number:	949	
Senate Pages:	1930-1934, 1936-1938	**8**
House Pages:	9938-9943	**6**
Committee:	Banks: 260-262, 430, 435-437	**7**

Page Total: **21**

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SENATE

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SENATOR LOONEY:

Yes, thank you, Mr. President. Mr. President, an item if we might mark it as order of the day, the first item to be taken up, and that is calendar page 31, Calendar 206, Senate Bill 949, An Act Concerning Mortgage Practices.

THE CHAIR:

Thank you, sir.

Mr. Clerk.

THE CLERK:

Calling from the Senate Calendar for Wednesday, May 6, 2009, Matters Returned From Committee, calendar page 31, matter marked order of the day, Calendar Number 206, File Number 235, Substitute for Senate Bill 949, An Act Concerning Mortgage Practices, favorable report of the Committee on Banks and Judiciary. Clerk is in possession of amendments.

THE CHAIR:

Senator Duff.

SENATOR DUFF:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Acting on approval of the bill, will you remark further, sir?

SENATOR DUFF:

Thank you, Mr. President. Mr. President, I'd like to call LCO Number 6753, and permitted leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 6753, which will be designated Senate Amendment Schedule A, is offered by Senator Duff of the 25th District, et al.

THE CHAIR:

Senator Duff.

SENATOR DUFF:

Thank you, Mr. President. Mr. President, I move adoption.

THE CHAIR:

Please proceed, sir.

SENATOR DUFF:

Thank you, Mr. President. Mr. President, this bill really builds upon last year's legislation which is House Bill 5577, An Act Concerning Responsible Lending and Economic Security. What this bill does this year is it actually sets up a couple new situations, which I think will help protect consumers through some of the crises and problems we've been having with the mortgages throughout the state and throughout the nation.

The main portion of this bill and I'd like to thank everyone who has worked so hard on this and as last year's legislation had passed the Senate 36 to zero, what this does is it makes a conviction of a single act of residential mortgage fraud a Class D felony under Connecticut law, and a person who commits two or more acts of residential mortgage fraud would be charged with Class C felony charges. So we are sending a strong message, Mr. President, on mortgage fraud in the state and it again, does build upon last year's successful bill that and -- and subsequent law that we did pass in this circle.

Also, Mr. President, what it does is some technical changes. It amends the definition of "nonprime home loan" to conform with that of a high priced loan under the Federal Reserve, under Regulation Z, which is truth in lending. It also amends Section 24 of House Bill 5577 last year, which is Public Act 08-176, deletes the exceptions to the prohibition against the making of nonprime loans unless the borrowers have received mortgage counseling.

Mr. President, I -- I believe this is a -- a bill that will -- will receive broad bipartisan support and I do urge my colleagues to support it. Thank you.

THE CHAIR:

Thank you, sir.

The motion is on adoption of Senate A, will you remark further on Senate A?

If not, let me try your minds. All those in favor signify by saying, aye.

VOICES:

Aye.

THE CHAIR:

All those opposed, nay.

The ayes have it, Senate A is adopted. Senator Duff.

SENATOR DUFF:

Thank you, Mr. President. Now the -- the amendment becomes to bill. It was a strike all and if there is no objection, might this to be placed on the Consent Calendar?

THE CHAIR:

Will you remark further on Senate Bill 949 as amended by Senate A?

If not, there is a motion on the floor to place the item on Consent.

Seeing no objections, Senator Duff, the item will be placed on Consent. Thank you, sir.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President. If we might call for a vote now on the Consent Calendar. The Clerk might call the items then we might vote on the calendar.

THE CHAIR:

Mr. Clerk, if you could please call the Consent Calendar, please.

THE CLERK:

Mr. President, those items placed on the first Consent Calendar begin on Calendar page 1, Calendar Number 127, Senate Joint Resolution Number 69.

Calendar page 7, Calendar Number 398, Substitute for House Bill 5694.

Calendar page 9, Calendar Number 452, Substitute for House Bill 6190.

Calendar page 14, Calendar Number 535, Substitute

Calendar page 43, Calendar 560, Substitute for House Joint Resolution Number 49; Calendar 561, House Joint Resolution Number 55; Calendar 562, House Joint Resolution Number 58; Calendar 563, House Joint Resolution Number 59.

Calendar page 44, Calendar 564, House Joint Resolution Number 61; Calendar 565, House Joint Resolution Number 66, Calendar 566, Substitute for House Joint Resolution Number 67; Calendar 567, Substitute for House Joint Resolution Number 70; Calendar 568, House Joint Resolution Number 72.

Calendar page 45, Calendar Number 569, House Joint Resolution Number 73; Calendar 570, House Joint Resolution Number 80; Calendar 571, House Joint Resolution Number 82; Calendar Number 572, House Joint Resolution Number 84; Calendar 573, House Joint Resolution Number 85.

Calendar page 46, Calendar 574, House Joint Resolution Number 86; Calendar 575, Substitute for House Joint Resolution Number 94; Calendar 576, House Joint Resolution Number 95; Calendar 577, Substitute for House Joint Resolution Number 96; Calendar 578, House Joint Resolution Number 63.

Mr. President, I believe that completes those items placed on the first Consent Calendar.

THE CHAIR:

Thank you. Clerk, if you could please call for a roll call vote, I will open the machine.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar, will all Senators please return to the chamber. The Senate is now voting by roll on the Consent Calendar, will all Senators please return to the chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be locked.

Mr. Clerk, please call the tally.

THE CLERK:

The motion is on adoption of Consent Calendar Number 1:

Total Number Voting	36
Necessary for Adoption	19
Those Voting Yea	36
Those Voting Nay	0
Those Absent/Not Voting	0

THE CHAIR:

Consent Calendar Number 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you. Thank you, Mr. President. Mr. President, I would move for suspension for immediate transmittal to the House of Representatives of item on calendar page 42, Calendar 519, Senate Bill 1092, An Act Concerning the Client's Security Fund, that was included in the immediately preceding vote on the Consent Calendar.

THE CHAIR:

Motion is to suspend down to the House Calendar 519.

Without objection, so ordered, sir.

SENATOR LOONEY:

Yes, thank you, Mr. President. Mr. President, as the second order of the day, I would ask the Clerk to call the item on calendar page 22, Calendar 595, Substitute for House Bill 6648.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Turning to calendar page 22, a matter marked second order of the day, Calendar Number 595, File

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REP. PERONE (137th):

Thank you very much, Mr. Speaker. I just wanted to extend my deepest thank you and appreciation to my interns here. Maria Borges has done a fantastic job through the whole Session. She's here a little longer than she probably planned to be, but she's done a great job and I just hope the Chamber would stand to give her the usual warm welcome. Thank you very much. (Applause.)

DEPUTY SPEAKER ALTOBELLO:

Thank you very much, Representative Perone. Further announcements or points of personal privilege?

If not, we'll return to the Call of the Calendar.

Will the Clerk please call Calendar Number 610.

THE CLERK:

On Page 16, Calendar Number 610, Substitute for Senate Bill Number 949 AN ACT CONCERNING MORTGAGE PRACTICES. Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER ALTOBELLO:

Representative Barry of the 12th District, you have the floor, sir.

REP. BARRY (12th):

Thank you very much, Mr. Speaker. I move for acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate. Please proceed, sir.

REP. BARRY (12th):

Thank you very much. The, actually the Clerk is, let's see here, the Clerk's in possession of LCO Number 8394. I would ask the Clerk to call and that I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please call LCO Number 8394, which has been previously designated Senate "A".

THE CLERK:

LCO Number 6753, Senate "A", offered by Senator Duff, Representative Barry, Senator Kane.

DEPUTY SPEAKER ALTOBELLO:

Representative Barry seeks leave of the Chamber to summarize. Without objection, please proceed.

REP. BARRY (12th):

Thank you very much, Mr. Speaker. This Bill creates the crime of residential mortgage fraud. It provides that a person who commits a single act of residential mortgage fraud is guilty of a Class c felony, while a person who commits two or more acts is guilty of a Class B felony.

It also makes some other technical changes to our mortgage practices provisions in our bank statutes regarding non-prime loans and other such things, and I urge passage of the Bill, or, adoption of the Amendment.

Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Representative Barry.

REP. BARRY (12th):

I'd ask permission, the leave of the Chamber to withdraw that Amendment because I have another LCO that I neglected to call that is the true Senate "A".

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Barry. Since the first Senate "A" is not properly before us as yet, you may call an additional Amendment at this point if you so desire.

REP. BARRY (12th):

Thank you very much, Mr. Speaker. I'd ask the Clerk to call, the Clerk is in possession of LCO Number 6753. I'd ask the Clerk to call that and may I be given permission, leave of the Chamber, to summarize.

DEPUTY SPEAKER ALTOBELLO:

Will the Clerk please call LCO Number 6753, which I believe was previously designated Senate "A".

THE CLERK:

LCO Number 6752, Senate "A", offered by Senators Duff and Kane and Representative Barry.

DEPUTY SPEAKER ALTOBELLO:

Representative Barry.

REP. BARRY (12th):

Thank you very much, Mr. Speaker. This Amendment that came down to us from the Senate, this Amendment creates, among other things, it creates the crime of residential mortgage fraud and provides that a person who commits one act of residential mortgage fraud, it says that they'll be guilty of a Class C felony.

And if they commit one or more acts of residential mortgage fraud, they'll be convicted of a Class B felony, and it also makes some technical changes to some things we did in our sub-prime Bill last year, including the definition of a non-prime loan. Thank you.

I urge adoption.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative. Representative Stripp of the 135th District, please proceed, sir.

REP. STRIPP (135th):

Thank you, Mr. Speaker. Mr. Speaker, this Bill will give the Banking Commissioner more tools to work with when trying to protect the consumer against issues of mortgage fraud.

So, Mr. Speaker, I think it's a good Bill. I think it will help the consumer and I would hope my colleagues would support it. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, Representative Stripp. Further on Senate "A"? Further on Senate "A"? If not, I'll try your minds.

All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed? The ayes have it. Senate "A" is adopted. Further on the Bill as amended? Further on the Bill? If not, staff and guests please retire to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber.

The House is voting by Roll Call. Members to the Chamber, please.

DEPUTY SPEAKER ALTOBELLO:

Have all Members voted? Have all Members voted? Please check the board to make sure your vote is properly cast. If all Members have voted, the machine will be locked.

The Clerk please take and announce the tally.

THE CLERK:

Senate Bill Number 949 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	145
Necessary for Passage	73
Those voting Yea	145
Those voting Nay	0
Those absent and not voting	6

DEPUTY SPEAKER ALTOBELLO:

The Bill passed in concurrence with the Senate.

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Connecticut cities manage the fallout from the foreclosure crisis and to keep our neighborhoods healthy, so I urge you to pass it and to understand again lead the nation in managing the foreclosure crisis like you did with the mediation program last year.

SENATOR DUFF: Thank you, very much.

Actually, we just -- for your information -- we did have an over sight hearing on NSP program, so I appreciate that. I know we're working closely with DECD on it and your two suggestions, I know our LCO attorney has been copiously taking notes and we will discuss that in our screening. So thank you --

SAMEERA FAZILI: Okay.

SENATOR DUFF: -- very much.

SAMEERA FAZILI: And, once again, with Robin, we are very happy to support and help in any way that we can, over at Yale, at the Law School, and put our students to work for you guys, if need be.

SENATOR DUFF: Thank you, so much.

Raphie, followed by Sam Hamilton.

RAPHAEL PODOLSKY: Senator Duff and Representative Barry, thank you, very much. HB6484 SB617

I'm Raphael Podolsky with the Legal Assistance Resource Center of Connecticut. We represent low-income consumers, low-income tenants, low-income homeowners. I want to -- I'm -- I'm going to try and speak briefly on a number of bills. I've submitted written testimony and I want to high light some things that -- that are -- that I want to call your attention to, particularly. HB6367 SB949 HB6482 HB6481 SB951

First of all, in regard to House Bill 84, -- 6484, on which you've had a lot of testimony dealing -- that's the bill on Emergency Mortgage Relief, I just want to say to you I think this is probably the most important bill I've seen in the committee this year, certainly from a consumer perspective, because it fills a critical gap. And I'll come back to it later if I have time. But I just -- I hope that you will really take this bill seriously and look at the possibility of moving it forward.

I want to say a couple things on bills where -- where I'm hoping you'll make some changes. Senate Bill Number 617, I did not submit testimony on because I did not appreciate that Section 2 of that bill amends the Community Reinvestment Act. And essentially what it does is Section 2 allows an exception to the requirement of filing a plan if the bank has a satisfactory rating. Virtually all banks in Connecticut have satisfactory ratings, so it effectively exempts almost all banks. I would ask you either to take Section 2 out or to require that the bank have an outstanding rating in community reinvestment before you exempt it from doing a plan.

In regard to Bills Number 6367 and 40 -- and -- and 949 which are substantially the same bill, the -- there is -- the initial first two -- the initial two sections deal with residential mortgage fraud. An earlier speaker spoke about the forfeiture provisions there. I would -- that is a bill -- those sections are sections that should be industry regulations for lenders and brokers that are engaged in residential foreclosure misconduct. It should -- it is written, however, also to apply to the borrower, and it is not appropriate for the borrower, and I urge you to limit that to the lenders and brokers. It's inappropriate for -- for -- for several reasons; it's basically way too severe. It makes a penalty of a B or C felony. It has the forfeiture provision. It doesn't even have a requirement that there have been any harm or there have been any reliance, and we know from our experience in sub-prime lending market that -- that especially mortgage -- some mortgage brokers have a -- have -- pad the application so they can get the contract and that -- that borrower often do not appreciate what's going on or understand the ways in which they information is being transformed, yet they will get hit because the argument will be they provided miss information.

There are other methods for dealing with actually borrower fraud, and we have existing fraud statutes. It also has an impact on collection tactics, because for those sub-prime lenders who are the worst in the industry, it invites them to threaten arrest of the borrower as a way of leveraging payments. I just think you need -- I have -- I don't have a general problem with the sections but they should not be applying to the borrower. Those are industry regulation sections.

House Bill 6482 would adopt the Uniform Debt Management Services Act. I contacted some of the national consumer organizations in the last couple days and apparently at the national level where this was written, some groups oppose parts of the act. Some of consumer groups oppose parts of the act. I would -- excuse me -- I would suggest that this needs more study and that the best thing to do with that is hold it for next year, possibly put -- put together a working group

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S.B. 949 and H.B. 6367 -- Residential Mortgage Fraud

Banks Committee public hearing -- February 24, 2009
Testimony of Raphael L. Podolsky

Recommended Committee action: **DELETION OR REVISION OF SECTIONS 1 AND 2 OF THE BILL**

Sections 1 and 2 of these bills inappropriately apply the newly created felony of "residential mortgage fraud" to consumers when it should be limited to fraud by lenders and brokers. The bills do not require that anyone, including the lender, have been harmed by the conduct, nor that the person to whom a misrepresentation was made in any way relied on the information in making a lending decision. See l. 35-38. Conviction of one "act" of fraud is a Class C felony (one to 10 years in jail) and two "acts" (which could include two misrepresentations in a single mortgage application) is a Class B felony (one to 20 years). See C.G.S. 53a-35a. Moreover, the bills provide for forfeiture of any property used in or realized through the fraud.

In its present form, the bills invite serious criminal prosecutions against the victims of overreaching lenders and brokers and, indeed, gives those lenders and brokers a powerful weapon to use against homeowners as a collection tool by threatening to have them arrested and prosecuted. Connecticut criminal law already prohibits as a larceny the obtaining of property by false pretenses. See C.G.S. 53a-119(2). The purpose in creating a separate mortgage fraud statute is presumably to escalate its importance and to induce prosecutors to prosecute and to seek heavy penalties.

It is well known that most of the fraud committed in subprime lending has come from lenders and brokers, not from borrowers. For example, some brokers of subprime mortgages considered it acceptable to pad mortgage applications to make them more marketable. The purpose of Sections 1 and 2 should be to prevent lenders and brokers, who are licensed by the state and subject to a duty of fair dealing, from engaging in fraudulent behavior. The penalties proposed by the bills are not appropriate, however, for use against a borrower. For example, under these bills, a homeowner who drives to a meeting with a mortgage broker who induces the borrower to include inaccurate information in a mortgage application can be convicted of a Class B or C felony and have his car seized and forfeited, even if no lender relies on the information and even if the application is denied and no credit is extended.

As a regulation of an industry in which presumably the arrest of a lender or broker for one violation suggests that many undetected violations have occurred, these bills may be reasonable. As the basis for the prosecution of a borrower, they are overkill.

February 24, 2008

TO: Banks Committee

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Concerning Raised Bill No. 949, (LCO No. 3425), An Act Concerning the Department of Banking's Proposal on Mortgage Practices and Governor's Bill No. 6367 (LCO No. 2644), An Act Concerning Mortgage Practices

The Connecticut Mortgage Bankers Association, Inc. ("CMBA"), which numbers over one hundred twenty organizations and 575 individuals, is a non-profit association formed in 1984. The two principal purposes of the CMBA are to promote the welfare of the mortgage lending industry in Connecticut and to improve its service to the citizens of Connecticut. The CMBA is Connecticut's only trade association dedicated exclusively to the mortgage banking industry in the State of Connecticut.

The CMBA recognizes the challenges facing many Connecticut residents and the need to ensure the proper functioning of the residential mortgage credit markets to serve current and prospective borrowers. The CMBA has had the opportunity to review Raised Bill No. 949 and Governor's Bill No. 6367 (the "Mortgage Practices Bills") and other legislative proposals. The CMBA supports measures to maintain residential mortgage credit availability for the citizens of Connecticut.

The CMBA generally supports the Mortgage Practices Bills to ensure the meaningful regulation of the mortgage loan industry in the State of Connecticut.

The CMBA proposes modifications to the Mortgage Practices Bills, which are discussed below. (For ease of reference, the comments below refer to Sections in Bill 949 but not to the comparable Sections in Bill 6367.)

• Civil Forfeiture Provision. Section 2 of the Mortgage Practices Bill would subject the property of persons who engage in residential mortgage fraud to "civil forfeiture" of the property used in the fraud to the state. While the CMBA supports efforts to discourage mortgage fraud and to subject persons engaging in mortgage fraud to liability for their conduct, the proposal could unnecessarily extend the forfeiture to loan funds handled by an innocent settlement agent or an innocent creditor to whom a portion of the loan proceeds are paid. Accordingly, the CMBA opposes the broad terms of the civil forfeiture provision in these bills.

• Continued Limitation of Applicability of Nonprime Home Loans to Owner-Occupied Dwellings. Connecticut General Statutes Section 36a-760 et seq. contain the provisions adopted in the 2008 legislative session which afford protections to borrowers with respect to "nonprime home loans". Those protections apply to loans with rates above certain thresholds where the loans were secured by owner-occupied dwellings. Section 6 of the Mortgage Practices Act would, however, incorporate a new definition of "first mortgage loan", "secondary mortgage loan", and "residential property" that would expand the coverage of the "nonprime home loan" law protections to property which is not owner-occupied. As a result, loans such as construction loans (which are not owner occupied property but which typically carry higher rates than loans on owner occupied property) and loans secured by investment property of borrowers who are making a personal investment but who are not in the business of being a landlord could become subject to this law. As a result, lenders may be unwilling to extend credit for such loans due to the restrictions on the loan terms applicable to "nonprime home loans." Accordingly, the CMBA proposes that the definitions of "first mortgage loan", "secondary mortgage loan", and "residential property" should be revised to limit their applicability to loans on 1 to 4 family owner occupied property.

• Retention of Underwriting Requirements and Restrictions Applicable to Obligors. Connecticut General Statutes Sections 36a-760 et seq. requires that lenders, among other things, not make a "nonprime home loan" unless the lender reasonably believes that the "obligors" will be able to repay the loan. The law imposes other requirements concerning "obligors", which is a term that can include co-signers and guarantors who a borrower might provide in order to establish creditworthiness. Section 7 of the Mortgage Practices Act Bills would substitute the term "borrower" for "obligor" and thereby require that a lender only rely on the "borrowers" income, assets and other criteria for establishing creditworthiness. As a result, some borrowers who could otherwise qualify with the assistance of a co-signer or guarantor would not be able to satisfy the underwriting requirements and restrictions imposed on lenders making "nonprime home loans". Accordingly, the CMBA opposes the substitution in the Mortgage Practices Act Bills of the term "borrower" for "obligor" since the change will result in the reduction of available credit to borrowers who are not creditworthy themselves but who with the assistance of a co-signer or guarantor could demonstrate creditworthiness.

• Retention of Ability of Lender to Make a Good Faith Inquiry As to Whether a Loan is a "Special Mortgage". As adopted in 2008, Connecticut General Statutes Section 36a-760c provides that a lender cannot make a "nonprime home loan" where all or a portion of the proceeds are used to fully or partially pay off a "special mortgage" (e.g., a loan originated, subsidized or guaranteed by or through a state, federal, tribal or local government, or nonprofit organization.) unless the borrower has obtained a written certification from a HUD approved counselor that the borrower has received mortgage counseling. Presently, there is an exemption from the certification requirement if the lender (1) makes a good-faith inquiry to the current holder or servicer of the loan and to the borrower as to whether the loan is a special mortgage; and (2) does not receive an affirmative response from either the current holder or servicer of the loan or the borrower indicating that it is a special mortgage. Section 8 of the Mortgage Practices Act Bills would remove that "good faith inquiry" exception. The CMBA opposes the removal of that exception, which can result in borrowers not being able to close on a new loan with more beneficial terms when the borrower is not able to procure the required certification in a timely manner.

• Balloon Payment Prohibition Should Not Apply to Construction Loans. Section 9 of the Mortgage Practices Act would limit the payment terms (such as prohibiting unequal payments, negative amortization, and the consolidation of multiple payments) for loans with terms of less than 7 years. While "bridge loans" are not subject to these limitations, the CMBA supports a specific exclusion for construction-only (as opposed to construction-permanent) loans.

While those construction loans secured by a borrower's existing dwelling can fall within the exclusion for "bridge loans", loans secured only by the property being constructed would not appear to fall within this exclusion. Accordingly, a specific exclusion for construction-only loans is warranted.