

# Senate Study Bill 2171

## Conference Committee Text

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1 1 Section 1. Section 654.12B, Code Supplement 1995, is  
1 2 amended to read as follows:  
1 3 654.12B PRIORITY OF RECORDED PURCHASE MONEY MORTGAGE LIEN.  
1 4 The lien created by a recorded purchase money mortgage  
1 5 shall have priority over and is senior to preexisting  
1 6 judgments against the purchaser and any other right, title,  
1 7 interest, or lien arising either directly or indirectly by,  
1 8 through, or under the purchaser. A mortgage is a purchase  
1 9 money mortgage

~~if~~  
~~to the extent~~ it is either

~~of the following~~

~~:-~~

1 10 1. Taken or retained by the seller of the real estate to  
1 11 secure all or part of its price, including all costs in  
1 12 connection with the purchase.  
1 13 2. Taken by a lender who, by making an advance or  
1 14 incurring an obligation, provides funds to enable the  
1 15 purchaser to acquire rights in the real estate, including all  
1 16 costs in connection with the purchase, if the funds are in  
1 17 fact so used. Except when it is a refinancing of an existing  
1 18 purchase money mortgage between the same lender and purchaser  
1 19 and no new funds are advanced, a mortgage given to secure  
1 20 funds which are used to pay off another mortgage is not a  
1 21 purchase money mortgage.  
1 22

~~The~~

~~If more than one purchase money mortgage exists, the~~  
1 23 first mortgage to be recorded has priority. In order to be  
1 24 entitled to the rights provided by this section, the mortgage  
1 25

~~shall~~

~~must~~ contain a recital that it is a purchase money  
1 26 mortgage

~~in order to provide notice to third parties of its~~

~~-~~

1 27

~~priority~~

~~-~~

~~If there is more than one purchase money mortgage,~~

~~-~~

1 28

~~a prior recorded mortgage has priority unless "the prior~~

~~-~~

1 29

~~recorded mortgage" or "a mortgage recorded earlier" provides~~

~~-~~

~~otherwise.~~

- However, failure to include the recital in the  
1 31 mortgage shall not prevent a mortgage otherwise qualifying as  
1 32 a purchase money mortgage from being a purchase money mortgage  
1 33 for purposes other than this section. The rights in this  
1 34 section are in addition to, and the obligations are not in  
1 35 derogation of, all rights provided by common law.

2 1 Sec. 2. RETROACTIVE APPLICABILITY. This Act applies  
2 2 retroactively to purchase money mortgages taken or retained on  
2 3 or after July 1, 1995.

2 4 EXPLANATION

2 5 This bill provides rights, in addition to those found at  
2 6 common law, for holders of purchase money mortgages. The bill  
2 7 provides that where more than one purchase money mortgage  
2 8 against a purchaser exists, the first to be recorded has  
2 9 priority. The bill also provides that the protection afforded  
2 10 through purchase money mortgages is limited to the purchase  
2 11 amount and related costs. In addition, the bill provides that  
2 12 the failure to provide notice that a mortgage is a purchase  
2 13 money mortgages does not prevent the mortgage from being a  
2 14 purchase money mortgage if it otherwise meets the requirements  
2 15 for a purchase money mortgage.

2 16 The bill is retroactively applicable to purchase money  
2 17 mortgages taken or retained on or after July 1, 1995.

2 18 LSB 3740SC 76

2 19 mk/cf/24