

# HOUSE BILL No. 5299

October 11, 2007, Introduced by Reps. Clack, Angerer, Tobocman, Sak, Simpson, Johnson, Miller, Accavitti, Byrnes, Melton, Young, Kathleen Law, Hopgood, Brown, Valentine, Hammel, Robert Jones, Gonzales, Donigan, Virgil Smith and Dean and referred to the Committee on Banking and Financial Services.

A bill to amend 2002 PA 660, entitled  
"Consumer mortgage protection act,"  
(MCL 445.1631 to 445.1645) by adding sections 7c and 7d.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 7C. (1) ANY PERSON WHO PURCHASES OR IS OTHERWISE ASSIGNED  
2 A HIGH-COST HOME LOAN IS SUBJECT TO ALL AFFIRMATIVE CLAIMS AND ANY  
3 DEFENSES WITH RESPECT TO THE LOAN THAT THE BORROWER COULD ASSERT  
4 AGAINST THE ORIGINAL CREDITOR OF THE LOAN. HOWEVER, THIS SUBSECTION  
5 DOES NOT APPLY IF THE PURCHASER OR ASSIGNEE DEMONSTRATES BY A  
6 PREPONDERANCE OF THE EVIDENCE THAT IT MEETS ALL OF THE FOLLOWING:  
7           (A) AT THE TIME OF THE PURCHASE OR ASSIGNMENT OF THE SUBJECT  
8 LOANS, HAS IN PLACE POLICIES THAT EXPRESSLY PROHIBIT ITS PURCHASE

1 OR ACCEPTANCE OF ASSIGNMENT OF ANY HIGH-COST HOME LOANS.

2 (B) REQUIRES BY CONTRACT THAT A SELLER OR ASSIGNOR OF HOME  
3 LOANS TO THE PURCHASER OR ASSIGNEE REPRESENTS AND WARRANTS 1 OF THE  
4 FOLLOWING TO THE PURCHASER OR ASSIGNEE:

5 (i) THAT THE SELLER OR ASSIGNOR WILL NOT SELL OR ASSIGN ANY  
6 HIGH-COST HOME LOANS TO THE PURCHASER OR ASSIGNEE.

7 (ii) THAT THE SELLER OR ASSIGNOR IS A BENEFICIARY OF A  
8 REPRESENTATION AND WARRANTY FROM A PREVIOUS SELLER OR ASSIGNOR TO  
9 THAT EFFECT.

10 (C) EXERCISES REASONABLE DUE DILIGENCE AT THE TIME OF PURCHASE  
11 OR ASSIGNMENT OF HOME LOANS OR WITHIN A REASONABLE PERIOD OF TIME  
12 AFTER THE PURCHASE OR ASSIGNMENT OF THOSE HOME LOANS, INTENDED BY  
13 THE PURCHASER OR ASSIGNEE TO PREVENT THE PURCHASER OR ASSIGNEE FROM  
14 PURCHASING OR TAKING ASSIGNMENT OF ANY HIGH-COST HOME LOANS.  
15 HOWEVER, FOR PURPOSES OF THIS SUBDIVISION, REASONABLE DUE DILIGENCE  
16 SHALL PROVIDE FOR SAMPLING AND SHALL NOT REQUIRE LOAN-BY-LOAN  
17 REVIEW.

18 (2) LIMITED TO AMOUNTS REQUIRED TO REDUCE OR EXTINGUISH THE  
19 BORROWER'S LIABILITY UNDER THE HOME LOAN PLUS AMOUNTS REQUIRED TO  
20 RECOVER COSTS AND REASONABLE ATTORNEY FEES, A BORROWER ACTING ONLY  
21 IN AN INDIVIDUAL CAPACITY MAY ASSERT CLAIMS THAT THE BORROWER COULD  
22 ASSERT AGAINST A CREDITOR OF THE HOME LOAN AGAINST ANY SUBSEQUENT  
23 HOLDER OR ASSIGNEE OF THE HOME LOAN AS FOLLOWS:

24 (A) WITHIN 5 YEARS OF THE CLOSING OF A HIGH-COST HOME LOAN, A  
25 VIOLATION OF THIS ACT IN CONNECTION WITH THE LOAN AS AN ORIGINAL  
26 ACTION.

27 (B) AT ANY TIME DURING THE TERM OF A HIGH-COST HOME LOAN,

1 AFTER AN ACTION TO COLLECT ON THE HOME LOAN OR FORECLOSE ON THE  
2 COLLATERAL SECURING THE HOME LOAN HAS BEEN INITIATED OR THE DEBT  
3 ARISING FROM THE HOME LOAN HAS BEEN ACCELERATED OR THE HOME LOAN  
4 HAS BECOME 60 DAYS IN DEFAULT, ANY DEFENSE, CLAIM OR COUNTERCLAIM,  
5 OR ACTION TO ENJOIN FORECLOSURE OR PRESERVE OR OBTAIN POSSESSION OF  
6 THE HOME THAT SECURES THE LOAN.

7 (3) THE PROVISIONS OF THIS SECTION ARE EFFECTIVE  
8 NOTWITHSTANDING ANY OTHER PROVISION OF LAW. HOWEVER, THIS SECTION  
9 SHALL NOT BE CONSTRUED TO LIMIT THE SUBSTANTIVE RIGHTS, REMEDIES,  
10 OR PROCEDURAL RIGHTS AVAILABLE TO A BORROWER AGAINST ANY CREDITOR,  
11 ASSIGNEE, OR HOLDER UNDER ANY OTHER LAW. THE RIGHTS CONFERRED ON  
12 BORROWERS BY SUBSECTIONS (1) AND (2) ARE INDEPENDENT OF EACH OTHER  
13 AND DO NOT LIMIT EACH OTHER.

14 SEC. 7D. (1) IN A CIVIL ACTION, IF A PERSON IS FOUND BY A  
15 PREPONDERANCE OF THE EVIDENCE TO HAVE VIOLATED THIS ACT, THE COURT  
16 MAY AWARD THE BORROWER ALL OF THE FOLLOWING:

17 (A) ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND INCIDENTAL  
18 DAMAGES. A BORROWER IS NOT REQUIRED TO DEMONSTRATE RELIANCE IN  
19 ORDER TO RECEIVE ACTUAL DAMAGES.

20 (B) FOR A VIOLATION OF SECTION 3, 4, OR 4A, STATUTORY DAMAGES  
21 IN AN AMOUNT EQUAL TO 2 TIMES THE FINANCE CHARGE PAID UNDER THE  
22 LOAN AND FORFEITURE OF THE REMAINING INTEREST UNDER THE LOAN.

23 (C) IF THE VIOLATION IS MALICIOUS OR RECKLESS, PUNITIVE  
24 DAMAGES.

25 (D) COSTS AND REASONABLE ATTORNEY FEES.

26 (2) THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY FOR THE  
27 COUNTY WHERE AN ALLEGED VIOLATION OCCURRED, OR A BORROWER MAY BRING

1 AN ACTION AGAINST A PERSON FOR INJUNCTIVE, DECLARATORY, AND ANY  
2 OTHER EQUITABLE RELIEF TO ENFORCE COMPLIANCE WITH THIS ACT.

3 (3) THE RIGHT OF RESCISSION GRANTED UNDER THE TRUTH IN LENDING  
4 ACT, 15 USC 1601 TO 1667F, FOR A VIOLATION OF THAT LAW IS AVAILABLE  
5 TO A BORROWER BY WAY OF RECOUPMENT AGAINST A PARTY FORECLOSING ON  
6 THE HOME LOAN OR COLLECTING ON THE LOAN, AT ANY TIME DURING THE  
7 TERM OF THE LOAN. THIS SUBSECTION DOES NOT LIMIT ANY RECOUPMENT  
8 RIGHT AVAILABLE TO A BORROWER UNDER ANY OTHER LAW.

9 (4) FOR PURPOSES OF THIS SECTION, A CREDITOR IN A HOME LOAN  
10 WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS ACT WHILE ACTING IN  
11 GOOD FAITH IS NOT IN VIOLATION OF THIS ACT IF THE CREDITOR  
12 ESTABLISHES EITHER OF THE FOLLOWING:

13 (A) WITHIN 30 DAYS OF THE LOAN CLOSING, AND BEFORE RECEIVING  
14 ANY NOTICE OF THE COMPLIANCE FAILURE, THE CREDITOR MADE APPROPRIATE  
15 RESTITUTION TO THE BORROWER AND APPROPRIATE ADJUSTMENTS TO THE  
16 LOAN.

17 (B) WITHIN 60 DAYS OF THE LOAN CLOSING AND BEFORE RECEIVING  
18 ANY NOTICE OF THE COMPLIANCE FAILURE, AND THE COMPLIANCE FAILURE  
19 WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR  
20 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO  
21 AVOID THOSE ERRORS, THE BORROWER IS NOTIFIED OF THE COMPLIANCE  
22 FAILURE, APPROPRIATE RESTITUTION IS MADE TO THE BORROWER, AND  
23 APPROPRIATE ADJUSTMENTS ARE MADE TO THE LOAN. AS USED IN THIS  
24 SUBSECTION, A "BONA FIDE ERROR" INCLUDES, BUT IS NOT LIMITED TO, A  
25 COMPUTER MALFUNCTION OR A CLERICAL, CALCULATION, COMPUTER  
26 PROGRAMMING, OR PRINTING ERROR. AN ERROR OF LEGAL JUDGMENT WITH  
27 RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS SECTION IS NOT A BONA

1 FIDE ERROR.

2 (5) THE REMEDIES PROVIDED IN THIS SECTION ARE CUMULATIVE AND  
3 ARE NOT THE EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER. A BORROWER  
4 IS NOT REQUIRED TO EXHAUST ANY ADMINISTRATIVE REMEDIES PROVIDED  
5 UNDER THIS ACT OR ANY OTHER APPLICABLE LAW BEFORE PROCEEDING UNDER  
6 THIS SECTION.

7 (6) A PROVISION IN AN AGREEMENT FOR A HOME LOAN THAT ALLOWS A  
8 PERSON TO REQUIRE A BORROWER, INDIVIDUALLY OR ON BEHALF OF  
9 SIMILARLY SITUATED BORROWERS, TO ASSERT ANY LEGAL CLAIM OR DEFENSE  
10 IN A FORUM LOCATED OUTSIDE OF THIS STATE OR LIMITS IN ANY WAY A  
11 CLAIM OR DEFENSE THE BORROWER MAY HAVE IS VOID AND UNENFORCEABLE.

12 (7) A PERSON SHALL NOT ATTEMPT IN BAD FAITH TO AVOID THE  
13 APPLICATION OF THIS ACT BY DIVIDING ANY HOME LOAN TRANSACTION INTO  
14 SEPARATE PARTS, STRUCTURE A HOME LOAN TRANSACTION AS AN OPEN-END  
15 LOAN FOR THE PURPOSE OF EVADING THIS ACT IF THE LOAN WOULD HAVE  
16 BEEN A HIGH-COST HOME LOAN IF THE LOAN HAD BEEN STRUCTURED AS A  
17 CLOSED-END LOAN, OR ENGAGE IN ANY OTHER SUBTERFUGE WITH THE INTENT  
18 OF EVADING THIS ACT.

19 Enacting section 1. This amendatory act does not take effect  
20 unless all of the following bills of the 94th Legislature are  
21 enacted into law:

22 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5294 (request no.  
23 02456'07 \*).

24 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5295 (request no.  
25 04909'07 \*).

26 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5296 (request no.  
27 04910'07 \*).

1 (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 5297 (request no.  
2 04911'07 \*).

3 (e) Senate Bill No. \_\_\_\_\_ or House Bill No. 5298 (request no.  
4 04912'07 \*).

5 (f) Senate Bill No. \_\_\_\_\_ or House Bill No. 5300 (request no.  
6 05435'07).

7 (g) Senate Bill No. \_\_\_\_\_ or House Bill No. 5301 (request no.  
8 05436'07).

9 (h) Senate Bill No. \_\_\_\_\_ or House Bill No. 5302 (request no.  
10 05437'07).

11 (i) Senate Bill No. \_\_\_\_\_ or House Bill No. 5303 (request no.  
12 05438'07).