SENATE BILL No. 690

September 20, 2011, Introduced by Senator HUNTER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 3205c (MCL 600.3205c), as added by 2009 PA 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 3205c. (1) If a borrower has contacted a housing counselor under section 3205b but the process has not resulted in an agreement to modify the mortgage loan, the person designated under section 3205a(1)(c) shall work with the borrower to determine whether the borrower qualifies for a loan modification. Unless the loan is described in subsection (2) or (3), in making the determination under this subsection, the person designated under section 3205a(1)(c) shall use a loan modification program or process that includes all of the following features:

(a) The loan modification program or process targets a ratio
of the borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis. Housing-related debt under this subdivision includes mortgage principal and interest, property taxes, insurance, and homeowner's fees.

(b) To reach the 38% target specified in subdivision (a), 1 or more of the following features:

(i) An interest rate reduction, as needed, subject to a floor of 3%, for a fixed term of at least 5 years.

(ii) An extension of the amortization period for the loan term, to 40 years or less from the date of the loan modification.

(iii) Deferral of some portion of the amount of the unpaid principal balance of 20% or less, until maturity, refinancing of the loan, or sale of the property.

(iv) Reduction or elimination of late fees.

(2) In making the determination under subsection (1), if the mortgage loan is pooled for sale to an investor that is a governmental entity, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the governmental entity.

(3) In making the determination under subsection (1), if the mortgage loan has been sold to a government-sponsored enterprise, the person designated under section 3205a(1)(c) shall follow the modification guidelines dictated by the government-sponsored enterprise.

(4) This section does not prohibit a loan modification on other terms or another loss mitigation strategy instead of modification if the other modification or strategy is agreed to by
the borrower and the person designated under section 3205a(1)(c).

(5) The person designated under section 3205a(1)(c) shall make

the determination under subsection (1) before the expiration of the period within which foreclosure proceedings are prohibited under section 3205a(1)(e) and provide the borrower with both of the following:

(a) A copy of any calculations made by the person under this section.

(b) If requested by the borrower, a copy of the program, process, or guidelines under which the determination under subsection (1) was made.

(6) Subject to subsection (7), if the results of the calculation under subsection (1) are that the borrower is eligible for a modification, the mortgage holder or mortgage servicer shall not foreclose the mortgage under this chapter but may proceed under chapter 31. THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL PREPARE A WRITTEN MODIFICATION AGREEMENT THAT CONTAINS THE TERMS AS CALCULATED UNDER SUBSECTION (1). A MORTGAGE SERVICER SHALL OBTAIN THE APPROPRIATE SIGNATURES ON THE MODIFICATION AGREEMENT FROM THE MORTGAGE HOLDER, AND A MORTGAGE HOLDER SHALL SIGN THE MODIFICATION AGREEMENT. THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL SEND THE MODIFICATION AGREEMENT TO THE BORROWER FOR THE BORROWER'S APPROVAL.

If the results of the calculation under subsection (1) are that the borrower is not eligible for a modification or if subsection (7) applies, the mortgage holder or mortgage lender may foreclose the mortgage under this chapter.

(7) If the determination under subsection (1) is that the
borrower is eligible for a modification, the mortgage holder or
mortgage servicer may proceed to foreclose the mortgage under this
chapter if both of the following apply:

(a) The person designated under section 3205a(1)(c) has in
good faith offered the borrower a modification agreement prepared
in accordance with the modification determination.

(b) For reasons not related to any action or inaction of the
mortgage holder or mortgage servicer, the borrower has not executed
and returned the modification agreement within 14 days after the
borrower received the agreement.

(8) If a mortgage holder or mortgage servicer begins
foreclosure proceedings under this chapter in violation of this
section, the borrower may file an action in the circuit court for
the county where the mortgaged property is situated to convert the
foreclosure proceeding to a judicial foreclosure. If a borrower
files an action under this section and the court determines that
the borrower participated in the process under section 3205b, a
modification agreement was not reached, and the borrower is
eligible for modification under subsection (1), and subsection (7)
does not apply, the court shall enjoin foreclosure of the mortgage
by advertisement and order that the foreclosure proceed under
chapter 31. AND ORDER THE PREPARATION OF A WRITTEN MODIFICATION
AGREEMENT UNDER SUBSECTION (6).