

HOUSE BILL No. 5295

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

A bill to amend 2002 PA 660, entitled
"Consumer mortgage protection act,"
by amending sections 3 and 4 (MCL 445.1633 and 445.1634).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) ~~A person shall broker, make, or service mortgage~~
2 ~~loans in accordance with all applicable state and federal laws. A~~
3 CREDITOR SHALL NOT DIRECTLY OR INDIRECTLY FINANCE ANY CREDIT LIFE,
4 CREDIT DISABILITY, CREDIT UNEMPLOYMENT, OR CREDIT PROPERTY
5 INSURANCE, ANY OTHER LIFE OR HEALTH INSURANCE, OR ANY PAYMENTS
6 DIRECTLY OR INDIRECTLY FOR ANY DEBT CANCELLATION OR SUSPENSION
7 AGREEMENT OR CONTRACT. HOWEVER, INSURANCE PREMIUMS OR DEBT
8 CANCELLATION OR SUSPENSION FEES CALCULATED AND PAID IN EQUAL
9 MONTHLY INSTALLMENTS ARE NOT CONSIDERED FINANCED BY THE CREDITOR.

10 (2) A CREDITOR SHALL NOT KNOWINGLY OR INTENTIONALLY MAKE A

1 HOME LOAN TO A BORROWER THAT REFINANCES AN EXISTING HOME LOAN IF
2 THE NEW LOAN DOES NOT HAVE REASONABLE, TANGIBLE NET BENEFIT TO THE
3 BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES, INCLUDING, BUT NOT
4 LIMITED TO, THE TERMS OF BOTH THE NEW AND REFINANCED LOANS, THE
5 COST OF THE NEW LOAN, AND THE BORROWER'S CIRCUMSTANCES.

6 (3) A CREDITOR SHALL NOT RECOMMEND OR ENCOURAGE DEFAULT OR
7 ENCOURAGE A BORROWER TO STOP MAKING PAYMENTS ON AN EXISTING LOAN OR
8 OTHER DEBT BEFORE AND IN CONNECTION WITH THE CLOSING OR PLANNED
9 CLOSING OF A HOME LOAN THAT REFINANCES ALL OR ANY PORTION OF THAT
10 EXISTING LOAN OR DEBT.

11 (4) A CREDITOR SHALL NOT DO ANY OF THE FOLLOWING:

12 (A) CHARGE A BORROWER A LATE PAYMENT FEE UNLESS THE LOAN
13 DOCUMENTS SPECIFICALLY AUTHORIZE THE FEE, THE FEE IS NOT IMPOSED
14 UNLESS THE PAYMENT IS PAST DUE FOR 10 DAYS OR MORE, AND THE FEE
15 DOES NOT EXCEED 5% OF THE AMOUNT OF THE LATE PAYMENT.

16 (B) CHARGE MORE THAN 1 LATE PAYMENT FEE WITH RESPECT TO ANY
17 SINGLE LATE PAYMENT.

18 (C) CHARGE A LATE PAYMENT FEE FOR A DEFAULT ON A LOAN PAYMENT
19 IF THE DEFAULT IS THE RESULT OF THE CREDITOR OR SERVICER DEDUCTING
20 A LATE PAYMENT FEE FROM A PREVIOUS PAYMENT MADE ON THE HOME LOAN.
21 HOWEVER, A CREDITOR MAY APPLY ANY PAYMENT MADE TO ANY UNPAID
22 BALANCES OF PAYMENTS DUE IN THE ORDER OF MATURITY, EVEN IF THE
23 RESULT IS A LATE PAYMENT FEE ACCRUING ON 1 OR MORE SUBSEQUENT
24 PAYMENTS DUE.

25 (5) A HOME LOAN MAY NOT CONTAIN A PROVISION THAT PERMITS THE
26 CREDITOR IN ITS SOLE DISCRETION TO ACCELERATE THE INDEBTEDNESS.
27 THIS SUBSECTION DOES NOT PROHIBIT ACCELERATION OF THE LOAN IN GOOD

1 FAITH DUE TO THE BORROWER'S FAILURE TO ABIDE BY THE MATERIAL TERMS
2 OF THE LOAN.

3 (6) A CREDITOR SHALL NOT CHARGE A FEE FOR VERBALLY INFORMING A
4 PERSON OF THE BALANCE DUE TO PAY OFF A HOME LOAN OR TO PROVIDE A
5 RELEASE UPON PREPAYMENT. A CREDITOR SHALL NOT CHARGE A PERSON A FEE
6 FOR TRANSMITTING A WRITTEN STATEMENT OF THE BALANCE DUE TO PAY OFF
7 A HOME LOAN OR TO PROVIDE A RELEASE UPON PREPAYMENT UNLESS THAT
8 PERSON HAS ALREADY REQUESTED 3 OR MORE WRITTEN STATEMENTS IN THE
9 PRECEDING 12-MONTH PERIOD. IF A PERSON REQUESTS MORE THAN 3 WRITTEN
10 STATEMENTS IN A 12-MONTH PERIOD, A CREDITOR MAY CHARGE A REASONABLE
11 FEE FOR ANY ADDITIONAL WRITTEN STATEMENTS TRANSMITTED TO THAT
12 PERSON.

13 (7) A CREDITOR SHALL PROVIDE A PAYOFF BALANCE UNDER SUBSECTION
14 (6) WITHIN 7 BUSINESS DAYS AFTER THE REQUEST.

15 (8) SUBJECT TO SUBSECTION (9), A CREDITOR SHALL NOT DO ANY OF
16 THE FOLLOWING IN CONNECTION WITH A HOME LOAN:

17 (A) STEER, COUNSEL, OR DIRECT A CONSUMER TO RATES, CHARGES,
18 PRINCIPAL AMOUNT, OR PREPAYMENT TERMS THAT ARE NOT REASONABLY
19 ADVANTAGEOUS TO THE BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES,
20 INCLUDING, BUT NOT LIMITED TO, THE CHARACTERISTICS OF THE PROPERTY
21 THAT SECURES OR WILL SECURE THE LOAN AND THE LOAN TERMS FOR WHICH
22 THE BORROWER QUALIFIES.

23 (B) MISCHARACTERIZE A BORROWER'S CREDIT HISTORY OR THE HOME
24 LOANS AVAILABLE TO A BORROWER.

25 (C) MISCHARACTERIZE THE APPRAISAL VALUE OF A DWELLING.

26 (D) IF UNABLE TO SUGGEST, OFFER, OR RECOMMEND TO A BORROWER A
27 REASONABLY ADVANTAGEOUS HOME LOAN, DISCOURAGE A BORROWER FROM

1 SEEKING A HOME LOAN FROM ANOTHER CREDITOR.

2 (9) SUBSECTION (8) DOES NOT PROHIBIT A CREDITOR FROM PROVIDING
3 A BORROWER WITH ACCURATE, UNBIASED, GENERAL INFORMATION ABOUT
4 CONSUMER HOME LOANS, UNDERWRITING STANDARDS, WAYS TO IMPROVE CREDIT
5 HISTORY, OR ANY OTHER MATTER RELEVANT TO A BORROWER.

6 (10) A CREDITOR SHALL NOT CHARGE OR COLLECT ANY PREPAYMENT FEE
7 OR PENALTY ON A HOME LOAN. A PREPAYMENT PENALTY PROVISION IN A HOME
8 LOAN IS VOID AND UNENFORCEABLE.

9 (11) A CREDITOR SHALL NOT EXTEND A HOME LOAN TO A BORROWER
10 UNLESS A REASONABLE CREDITOR WOULD BELIEVE AT THE TIME THE LOAN IS
11 CLOSED THAT THE BORROWER IS ABLE TO MAKE THE SCHEDULED PAYMENTS
12 ASSOCIATED WITH THE LOAN. ALL OF THE FOLLOWING APPLY TO A
13 DETERMINATION OF A BORROWER'S ABILITY TO PAY UNDER THIS SUBSECTION:

14 (A) THE DETERMINATION INCLUDES, BUT IS NOT LIMITED TO,
15 CONSIDERATION OF THE BORROWER'S INCOME, CURRENT OBLIGATIONS,
16 EMPLOYMENT STATUS, THE DEBT TO INCOME RATIO OF THE BORROWER'S
17 MONTHLY GROSS INCOME, AND WHETHER THE BORROWER HAS SUFFICIENT
18 RESIDUAL INCOME AND OTHER AVAILABLE FINANCIAL RESOURCES OTHER THAN
19 THE BORROWER'S EQUITY IN THE PRINCIPAL DWELLING THAT SECURES OR
20 WILL SECURE THE HOME LOAN.

21 (B) ALL OF THE FOLLOWING CALCULATION ASSUMPTIONS APPLICABLE TO
22 THE LOAN ARE USED IN EVALUATING THE BORROWER'S ABILITY TO REPAY:

23 (i) FOR A NONTRADITIONAL MORTGAGE, OTHER THAN A RATE SPREAD
24 HOME LOAN, THE MONTHLY PAYMENT AMOUNTS, BASED ON, AT A MINIMUM, THE
25 FULLY INDEXED RATE, ASSUMING A FULLY AMORTIZING REPAYMENT SCHEDULE.

26 (ii) FOR A RATE SPREAD HOME LOAN, THE MAXIMUM MONTHLY PAYMENTS
27 THAT COULD BE DUE UNDER THE TERMS OF THE HOME LOAN BEING OFFERED

1 FOR THE FIRST 7 YEARS OF THE LOAN TERM AND THE CHANGES IN PAYMENTS
2 THAT WOULD RESULT FROM DIFFERENCES IN THE PAYMENTS TOWARD PRINCIPAL
3 OF THE LOAN.

4 (iii) FOR A HOME LOAN PRODUCT THAT PERMITS NEGATIVE
5 AMORTIZATION, THE REPAYMENT ANALYSIS IS BASED ON THE INITIAL LOAN
6 AMOUNT PLUS ANY BALANCE INCREASE THAT MAY ACCRUE FROM THE NEGATIVE
7 AMORTIZATION PROVISION.

8 (iv) THE BORROWER'S OTHER EXPENSES, INCLUDING PRIVATE MORTGAGE
9 INSURANCE PREMIUMS, PROPERTY TAXES AND HAZARD INSURANCE, DEBT
10 CANCELLATION, AND SCHEDULED PAYMENTS FOR ALL OTHER DEBT.

11 (v) VERIFICATION OF ALL SOURCES OF INCOME BY TAX RETURNS,
12 PAYROLL RECEIPTS, FINANCIAL RECORDS, OR ANY REASONABLE ALTERNATIVE
13 OR THIRD-PARTY VERIFICATION.

14 (12) AS USED IN THIS SECTION AND SECTION 4A, "FULLY INDEXED
15 RATE" MEANS THE INDEX RATE PREVAILING AT THE TIME THE
16 NONTRADITIONAL MORTGAGE IS ORIGINATED PLUS THE MARGIN THAT WILL
17 APPLY AFTER THE EXPIRATION OF AN INTRODUCTORY INTEREST RATE. AS
18 USED IN THIS SUBSECTION:

19 (A) "INDEX RATE" MEANS A PUBLISHED INDEX RATE TO WHICH THE
20 INTEREST RATE ON THE NONTRADITIONAL MORTGAGE IS TIED.

21 (B) "MARGIN" MEANS THE NUMBER OF PERCENTAGE POINTS A CREDITOR
22 ADDS TO THE INDEX VALUE TO CALCULATE THE NONTRADITIONAL MORTGAGE
23 INTEREST RATE AT EACH ADJUSTMENT PERIOD.

24 Sec. 4. (1) A person offering to make or making a ~~mortgage~~
25 HOME loan shall not do either of the following:

26 (a) Charge a fee for a product or service if the product or
27 service is not actually provided to the customer.

1 (b) Misrepresent the amount charged by or paid to a third
2 party for a product or service.

3 ~~—— (2) A lender in making a mortgage loan shall not finance as~~
4 ~~part of the loan single premium coverage for any credit life,~~
5 ~~credit disability, or credit unemployment.~~

6 (2) ~~(3)~~ A person, appraiser, or real estate agent shall not
7 make, directly or indirectly, any false, deceptive, or misleading
8 statement or representation in connection with a ~~mortgage~~ **HOME**
9 loan, including, but not limited to, the borrower's ability to
10 qualify for a ~~mortgage~~ **HOME** loan or the value of the dwelling that
11 will secure repayment of the ~~mortgage~~ **HOME** loan.

12 (3) ~~(4)~~ A lender **CREDITOR** shall not insert or change
13 information on an application for a ~~mortgage~~ **HOME** loan if the
14 ~~lender~~ **CREDITOR** knows that the information is false and misleading
15 and intended to deceive a third party that the borrower is
16 qualified for the loan ~~when~~ **IF** in fact the third party would not
17 approve the loan without the insertion or change.

18 ~~—— (5) A statement or representation is deceptive or misleading~~
19 ~~if it has the capacity to deceive or mislead a borrower or~~
20 ~~potential borrower. The commissioner shall consider any of the~~
21 ~~following factors in deciding whether a statement or~~
22 ~~misrepresentation is deceptive or misleading:~~

23 ~~—— (a) The overall impression that the statement or~~
24 ~~representation reasonably creates.~~

25 ~~—— (b) The particular type of audience to which the statement is~~
26 ~~directed.~~

27 ~~—— (c) Whether it may be reasonably comprehended by the segment~~

1 ~~of the public to which the statement is directed.~~

2 (4) ~~(6)~~ A lender **CREDITOR** shall not condition the payment of
3 an appraisal upon a predetermined value or the closing of the
4 ~~mortgage~~ **HOME** loan ~~which~~ **THAT** is the basis of the appraisal.

5 (5) ~~(7)~~ A person shall not directly or indirectly compensate,
6 coerce, or intimidate an appraiser for the purpose of influencing
7 the independent judgment of the appraiser with respect to the value
8 of the dwelling offered as security for repayment of ~~the mortgage~~ **A**
9 **HOME** loan.

10 (6) ~~(8)~~ A ~~mortgage~~ **HOME** loan note shall not contain blanks
11 regarding payments, interest rates, maturity date, or amount
12 borrowed to be filled in after the note is signed by the borrower.

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

16 (a) Senate Bill No. ____ or House Bill No. 5294 (request no.
17 02456'07 *).

18 (b) Senate Bill No. ____ or House Bill No. 5296 (request no.
19 04910'07 *).

20 (c) Senate Bill No. ____ or House Bill No. 5297 (request no.
21 04911'07 *).

22 (d) Senate Bill No. ____ or House Bill No. 5298 (request no.
23 04912'07 *).

24 (e) Senate Bill No. ____ or House Bill No. 5299 (request no.
25 04913'07 *).

26 (f) Senate Bill No. ____ or House Bill No. 5300 (request no.
27 05435'07).

1 (g) Senate Bill No.____ or House Bill No. 5301(request no.
2 05436'07).

3 (h) Senate Bill No.____ or House Bill No. 5302(request no.
4 05437'07).

5 (i) Senate Bill No.____ or House Bill No. 5303(request no.
6 05438'07).