

# HOUSE BILL No. 5296

October 11, 2007, Introduced by Reps. Melton, Tobocman, Sak, Angerer, Simpson, Clack, Jackson, Miller, Byrnes, Accavitti, Johnson, Young, Kathleen Law, Hopgood, Brown, Valentine, Hammel, Robert Jones, Vagnozzi, 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,"  
by amending section 5 (MCL 445.1635) and by adding section 4a.

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

1           SEC. 4A. (1) A CREDITOR SHALL NOT EXTEND A RATE SPREAD HOME  
2 LOAN OR NONTRADITIONAL MORTGAGE TO A BORROWER UNLESS A REASONABLE  
3 CREDITOR WOULD BELIEVE AT THE TIME THE LOAN IS CLOSED THAT THE  
4 BORROWER IS ABLE TO MAKE THE SCHEDULED PAYMENTS ASSOCIATED WITH THE  
5 LOAN. ALL OF THE FOLLOWING APPLY TO A DETERMINATION OF A BORROWER'S  
6 ABILITY TO PAY UNDER THIS SUBSECTION:

7           (A) THE DETERMINATION INCLUDES, BUT IS NOT LIMITED TO,  
8 CONSIDERATION OF THE BORROWER'S INCOME, CURRENT OBLIGATIONS,  
9 EMPLOYMENT STATUS, THE DEBT TO INCOME RATIO OF THE BORROWER'S

1 MONTHLY GROSS INCOME, AND WHETHER THE BORROWER HAS SUFFICIENT  
2 RESIDUAL INCOME AND OTHER AVAILABLE FINANCIAL RESOURCES OTHER THAN  
3 THE BORROWER'S EQUITY IN THE PRINCIPAL DWELLING THAT SECURES OR  
4 WILL SECURE THE HOME LOAN.

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

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

10 (ii) FOR A RATE SPREAD HOME LOAN, THE MAXIMUM MONTHLY PAYMENTS  
11 THAT COULD BE DUE UNDER THE TERMS OF THE HOME LOAN BEING OFFERED  
12 FOR THE FIRST 7 YEARS OF THE LOAN TERM AND THE CHANGES IN PAYMENTS  
13 THAT WOULD RESULT FROM DIFFERENCES IN THE PAYMENTS TOWARD PRINCIPAL  
14 OF THE LOAN.

15 (iii) FOR A HOME LOAN PRODUCT THAT PERMITS NEGATIVE  
16 AMORTIZATION, THE REPAYMENT ANALYSIS IS BASED ON THE INITIAL LOAN  
17 AMOUNT PLUS ANY BALANCE INCREASE THAT MAY ACCRUE FROM THE NEGATIVE  
18 AMORTIZATION PROVISION.

19 (iv) THE BORROWER'S OTHER EXPENSES, INCLUDING PRIVATE MORTGAGE  
20 INSURANCE PREMIUMS, PROPERTY TAXES AND HAZARD INSURANCE, AND  
21 SCHEDULED PAYMENTS FOR ALL OTHER DEBT.

22 (v) VERIFICATION OF ALL SOURCES OF INCOME BY TAX RETURNS,  
23 PAYROLL RECEIPTS, BANK RECORDS, OR ANY REASONABLE ALTERNATIVE OR  
24 THIRD-PARTY VERIFICATION.

25 (2) A CREDITOR SHALL NOT PROVIDE A RATE SPREAD HOME LOAN OR A  
26 NONTRADITIONAL MORTGAGE UNLESS THE CREDITOR REQUIRES THE ESCROW OF  
27 PROPERTY TAXES AND HAZARD INSURANCE.

1        ~~Sec. 5. A mortgage loan with a term of less than 5 years shall~~  
2 ~~not have a payment schedule with regular periodic payments that~~  
3 ~~when aggregated do not fully amortize the outstanding principal~~  
4 ~~balance. This section does not apply to loans with maturities of~~  
5 ~~less than 1 year, if the purpose of the loan is a "bridge" loan~~  
6 ~~connected with the acquisition or construction of a dwelling~~  
7 ~~intended to become the borrower's principal dwelling. IN ADDITION~~  
8 ~~TO THE OTHER REQUIREMENTS OF THIS ACT, A HIGH-COST HOME LOAN IS~~  
9 ~~SUBJECT TO THE FOLLOWING ADDITIONAL LIMITATIONS AND PROHIBITED~~  
10 ~~PRACTICES:~~

11            (A) A CREDITOR SHALL NOT DIRECTLY OR INDIRECTLY FINANCE ANY  
12 POINTS OR FEES IN CONNECTION WITH A HIGH-COST HOME LOAN.

13            (B) A CREDITOR SHALL NOT INCLUDE IN THE LOAN DOCUMENTS FOR A  
14 HIGH-COST HOME LOAN OR CHARGE A BORROWER IN A HIGH-COST HOME LOAN  
15 ANY PREPAYMENT FEES OR PENALTIES.

16            (C) A HIGH-COST HOME LOAN SHALL NOT CONTAIN A SCHEDULED  
17 PAYMENT THAT IS MORE THAN TWICE AS LARGE AS THE AVERAGE OF EARLIER  
18 SCHEDULED PAYMENTS. THIS SUBDIVISION DOES NOT APPLY WHEN THE  
19 PAYMENT SCHEDULE IS ADJUSTED TO THE SEASONAL OR IRREGULAR INCOME OF  
20 THE BORROWER.

21            (D) A HIGH-COST HOME LOAN SHALL NOT INCLUDE PAYMENT TERMS  
22 UNDER WHICH THE OUTSTANDING PRINCIPAL BALANCE OR ACCRUED INTEREST  
23 WILL INCREASE AT ANY TIME OVER THE COURSE OF THE LOAN BECAUSE THE  
24 REGULARLY SCHEDULED PERIODIC PAYMENTS DO NOT COVER THE FULL AMOUNT  
25 OF INTEREST DUE.

26            (E) A HIGH-COST HOME LOAN SHALL NOT CONTAIN A PROVISION THAT  
27 INCREASES THE INTEREST RATE AFTER DEFAULT. THIS SUBDIVISION DOES

1 NOT APPLY TO INTEREST RATE CHANGES IN A VARIABLE RATE LOAN  
2 OTHERWISE CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS, IF  
3 THE CHANGE IN THE INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF  
4 DEFAULT OR THE ACCELERATION OF THE INDEBTEDNESS.

5 (F) A HIGH-COST HOME LOAN SHALL NOT INCLUDE TERMS UNDER WHICH  
6 MORE THAN 2 PERIODIC PAYMENTS REQUIRED UNDER THE LOAN ARE  
7 CONSOLIDATED AND PAID IN ADVANCE FROM THE LOAN PROCEEDS PROVIDED TO  
8 THE BORROWER.

9 (G) A CREDITOR SHALL NOT MAKE A HIGH-COST HOME LOAN WITHOUT  
10 FIRST RECEIVING CERTIFICATION FROM A COUNSELOR FROM AN INDEPENDENT  
11 NONPROFIT ORGANIZATION APPROVED BY THE UNITED STATES DEPARTMENT OF  
12 HOUSING AND URBAN DEVELOPMENT, A STATE HOUSING FINANCING AGENCY, OR  
13 THE REGULATORY AGENCY THAT HAS JURISDICTION OVER THE CREDITOR, THAT  
14 THE BORROWER HAS RECEIVED COUNSELING ON THE ADVISABILITY OF THE  
15 LOAN TRANSACTION.

16 (H) A CREDITOR SHALL NOT PAY A CONTRACTOR UNDER A HOME-  
17 IMPROVEMENT CONTRACT FROM THE PROCEEDS OF A HIGH-COST HOME LOAN,  
18 UNLESS BOTH OF THE FOLLOWING ARE MET:

19 (i) THE CREDITOR IS PRESENTED WITH A SIGNED AND DATED  
20 CERTIFICATE OF HOME OCCUPANCY OR CERTIFICATE OF FINAL INSPECTION,  
21 AS APPLICABLE, SHOWING THAT THE HOME IMPROVEMENTS HAVE BEEN  
22 COMPLETED.

23 (ii) THE INSTRUMENT IS PAYABLE TO THE BORROWER OR JOINTLY TO  
24 THE BORROWER AND THE CONTRACTOR OR, AT THE ELECTION OF THE  
25 BORROWER, THROUGH A THIRD-PARTY ESCROW AGENT IN ACCORDANCE WITH  
26 TERMS ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY THE BORROWER,  
27 THE CREDITOR, AND THE CONTRACTOR BEFORE THE DISBURSEMENT.

1 (I) A CREDITOR SHALL NOT CHARGE A BORROWER A FEE OR OTHER  
2 AMOUNT TO MODIFY, RENEW, EXTEND, OR AMEND A HIGH-COST HOME LOAN OR  
3 TO DEFER ANY PAYMENT DUE UNDER THE TERMS OF A HIGH-COST HOME LOAN.

4 (J) A HIGH-COST HOME LOAN DOCUMENT THAT CREATES A DEBT OR AN  
5 INTEREST IN PROPERTY TO SECURE A DEBT SHALL INCLUDE THE FOLLOWING  
6 NOTICE, PRINTED CONSPICUOUSLY ON THE FACE OF THE DOCUMENT:

7 "NOTICE: THIS IS A HIGH-COST HOME LOAN SUBJECT TO SPECIAL  
8 RULES UNDER STATE LAW. A PURCHASER OR ASSIGNEE OF THIS HIGH-COST  
9 HOME LOAN MAY BE LIABLE FOR ALL CLAIMS AND DEFENSES OF THE BORROWER  
10 WITH RESPECT TO THE HOME LOAN."

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

14 (a) Senate Bill No. \_\_\_\_ or House Bill No. 5294 (request no.  
15 02456'07 \*).

16 (b) Senate Bill No. \_\_\_\_ or House Bill No. 5295 (request no.  
17 04909'07 \*).

18 (c) Senate Bill No. \_\_\_\_ or House Bill No. 5297 (request no.  
19 04911'07 \*).

20 (d) Senate Bill No. \_\_\_\_ or House Bill No. 5298 (request no.  
21 04912'07 \*).

22 (e) Senate Bill No. \_\_\_\_ or House Bill No. 5299 (request no.  
23 04913'07 \*).

24 (f) Senate Bill No. \_\_\_\_ or House Bill No. 5300 (request no.  
25 05435'07).

26 (g) Senate Bill No. \_\_\_\_ or House Bill No. 5301 (request no.  
27 05436'07).

1           (h) Senate Bill No. \_\_\_\_\_ or House Bill No. 5302 (request no.  
2 05437'07).

3           (i) Senate Bill No. \_\_\_\_\_ or House Bill No. 5303 (request no.  
4 05438'07).