

HOUSE BILL No. 4065

January 22, 2009, Introduced by Rep. Switalski and referred to the Committee on Banking and Financial Services.

A bill to amend 2002 PA 660, entitled "Consumer mortgage protection act," by amending the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 (MCL 445.1631, 445.1632, 445.1633, 445.1634, 445.1635, 445.1636, 445.1637, 445.1638, 445.1639, 445.1640, 445.1641, 445.1642, 445.1643, 445.1644, and 445.1645) and by adding sections 7a and 7b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to prohibit certain lending practices; to require disclosure of certain information for home loans **AND HIGH-COST HOME LOANS**; to prescribe certain duties and obligations of the lender in a home loan **OR HIGH-COST HOME LOAN** transaction; to prescribe the

1 powers and duties of certain state agencies and officials; and to
2 prescribe penalties and provide for remedies.

3 Sec. 1. This act shall be known and may be cited as the
4 ~~"consumer mortgage"~~ **"HOME LOAN** protection act".

5 Sec. 2. (1) As used in this act:

6 (A) **"AFFILIATE"** MEANS A COMPANY THAT CONTROLS, IS CONTROLLED
7 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER COMPANY.

8 (B) **"ANNUAL PERCENTAGE RATE"** MEANS AN ANNUAL PERCENTAGE RATE
9 FOR A LOAN DETERMINED UNDER 12 CFR PART 226.

10 (C) **"BONA FIDE DISCOUNT POINTS"** MEANS AN AMOUNT PAID BY A
11 BORROWER THAT MEETS ALL OF THE FOLLOWING:

12 (i) IT IS KNOWINGLY PAID BY THE BORROWER FOR THE EXPRESS
13 PURPOSE OF REDUCING THE INTEREST RATE APPLICABLE TO A HOME LOAN.

14 (ii) IT RESULTS IN A BONA FIDE REDUCTION OF THE INTEREST RATE
15 APPLICABLE TO THE HOME LOAN.

16 (iii) IT IS PAID IN CONNECTION WITH A HOME LOAN FOR WHICH THE
17 UNDISCOUNTED INTEREST RATE DOES NOT EXCEED THE CONVENTIONAL
18 MORTGAGE RATE BY 2 OR MORE PERCENTAGE POINTS FOR A HOME LOAN
19 SECURED BY A FIRST LIEN OR BY 3-1/2 OR MORE PERCENTAGE POINTS FOR A
20 HOME LOAN SECURED BY A SUBORDINATED LIEN.

21 (D) **"BORROWER"** MEANS ANY NATURAL PERSON OBLIGATED TO REPAY A
22 LOAN. THE TERM INCLUDES A COBORROWER, COSIGNER, OR GUARANTOR.

23 (E) ~~(a)~~ **"Commissioner"** means the commissioner of the office of
24 financial and insurance ~~services~~ **REGULATION** of the department of
25 ~~consumer and industry services~~ **ENERGY, LABOR, AND ECONOMIC GROWTH.**

26 ~~—— (b) "Depository institution" means a bank, savings and loan~~
27 ~~association, savings bank, or a credit union chartered under state~~

1 ~~or federal law.~~

2 ~~—— (c) "Home improvement installment contract" means an agreement~~
 3 ~~of 1 or more documents covering the sale of goods or furnishing of~~
 4 ~~services to a buyer for improvements to the buyer's principal~~
 5 ~~dwelling located in this state used for occupancy of 4 or fewer~~
 6 ~~families under which the buyer promises to pay in installments all~~
 7 ~~or any part of the price of the goods or services.~~

8 ~~—— (d) "Mortgage loan" means a loan or home improvement~~
 9 ~~installment contract secured by a first or subordinate mortgage or~~
 10 ~~any other form of lien or a land contract covering real property~~
 11 ~~located in this state used as the borrower's principal dwelling and~~
 12 ~~designed for occupancy by 4 or fewer families. Mortgage loan does~~
 13 ~~not include any of the following:~~

14 ~~—— (i) Loans in which the proceeds are used to acquire the~~
 15 ~~dwelling.~~

16 ~~—— (ii) Reverse mortgage transactions.~~

17 ~~—— (iii) An open end credit plan being a loan in which the lender~~
 18 ~~reasonably contemplates repeated advances.~~

19 (F) "COMPANY" MEANS A PERSON OTHER THAN A NATURAL PERSON.

20 (G) "CONVENTIONAL MORTGAGE RATE" MEANS THE MOST RECENTLY
 21 PUBLISHED ANNUAL YIELD ON CONVENTIONAL MORTGAGES PUBLISHED BY THE
 22 BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN STATISTICAL
 23 RELEASE H.15 AS OF THE APPLICABLE TIME SET FORTH IN 12 CFR
 24 226.32 (A) (1) (i) .

25 (H) SUBJECT TO SUBSECTION (3), "CREDITOR" MEANS A LENDER, AS
 26 THAT TERM IS DEFINED IN 24 CFR 3500.2, OR A MORTGAGE BROKER.

27 (I) "DEPOSITORY FINANCIAL INSTITUTION" MEANS A STATE OR

1 NATIONALLY CHARTERED BANK, A STATE OR FEDERALLY CHARTERED SAVINGS
2 AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT UNION, OR AN ENTITY
3 OF THE FEDERALLY CHARTERED FARM CREDIT SYSTEM.

4 (J) IN CONNECTION WITH A HOME LOAN, "EXCLUDED POINTS AND FEES"
5 MEANS 1 OR MORE OF THE FOLLOWING:

6 (i) AN AMOUNT THAT IS NOT MORE THAN 2% OF THE TOTAL LOAN
7 AMOUNT, ATTRIBUTABLE TO BONA FIDE FEES PAID TO A FEDERAL OR STATE
8 GOVERNMENT AGENCY THAT INSURES PAYMENT OF SOME PORTION OF A HOME
9 LOAN.

10 (ii) AN AMOUNT THAT IS NOT MORE THAN 2% OF THE LOAN AMOUNT,
11 ATTRIBUTABLE TO BONA FIDE DISCOUNT POINTS.

12 (iii) GOVERNMENT FEES.

13 (K) "HIGH-COST HOME LOAN" MEANS A HOME LOAN IN WHICH THE TERMS
14 OF THE LOAN MEET OR EXCEED 1 OR MORE THRESHOLDS. THE TERM DOES NOT
15 INCLUDE A GOVERNMENT-SPONSORED LOAN.

16 (L) "HOME LOAN" MEANS A CLOSED-END OR OPEN-END CREDIT PLAN OR
17 OTHER EXTENSION OF CREDIT THAT MEETS ALL OF THE FOLLOWING:

18 (i) IT DOES NOT EXCEED THE MAXIMUM ORIGINAL PRINCIPAL
19 OBLIGATION AS SET FORTH IN SECTION 305(A)(2) OF THE FEDERAL HOME
20 LOAN MORTGAGE ACT, 12 USC 1454(A)(2).

21 (ii) IT MEETS THE REQUIREMENTS FOR A FEDERALLY RELATED MORTGAGE
22 LOAN UNDER 24 CFR 3500.2.

23 (iii) IT IS NOT A REVERSE MORTGAGE TRANSACTION OR A LOAN
24 PRIMARILY FOR BUSINESS, AGRICULTURAL, OR COMMERCIAL PURPOSES.

25 (M) "INDEX" MEANS A PUBLISHED INDEX RATE TO WHICH THE INTEREST
26 RATE ON A HOME LOAN IS TIED.

27 (N) "MARGIN" MEANS THE NUMBER OF PERCENTAGE POINTS A CREDITOR

1 ADDS TO AN INDEX TO CALCULATE THE INTEREST RATE AT EACH ADJUSTMENT
 2 PERIOD, AS SET FORTH IN THE LOAN AGREEMENT

3 (O) "MORTGAGE BROKER" MEANS THAT TERM AS DEFINED IN 24 CFR
 4 3500.2.

5 (P) ~~(e)~~ "Person" means an individual, corporation, **LIMITED**
 6 **LIABILITY COMPANY**, partnership, association, governmental entity,
 7 or any other legal entity.

8 ~~—— (f) "Reverse mortgage" means a nonrecourse loan under which~~
 9 ~~both of the following apply:~~

10 ~~—— (i) A mortgage or other form of lien securing 1 or more~~
 11 ~~advances is created in the borrower's principal dwelling.~~

12 ~~—— (ii) The principal, interest, or shared appreciation or equity~~
 13 ~~is payable only after the borrower dies, the dwelling is~~
 14 ~~transferred, or the borrower ceases to occupy the dwelling as a~~
 15 ~~principal dwelling.~~

16 ~~—— (g) "Regulated lender" means a depository institution or a~~
 17 ~~licensee or a registrant under the consumer financial services act,~~
 18 ~~1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to~~
 19 ~~493.114, the secondary mortgage loan act, 1981 PA 125, MCL 493.51~~
 20 ~~to 493.81, or the mortgage brokers, lenders, and servicers~~
 21 ~~licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and a seller~~
 22 ~~under the home improvement finance act, 1965 PA 332, MCL 445.1101~~
 23 ~~to 445.1431.~~

24 ~~—— (h) "State and federal laws" means, individually and~~
 25 ~~collectively, 1 or more of the laws or regulations of this state or~~
 26 ~~the federal government which regulate or are applicable to a~~
 27 ~~mortgage loan or a person when brokering, making, servicing, or~~

~~1 collecting a mortgage loan, including, without limitation, the~~
~~2 federal truth in lending act, title I of the consumer credit~~
~~3 protection act, Public Law 90 321, 15 U.S.C. 1601 to 1608, 1610 to~~
~~4 1613, 1615, 1631 to 1635, 1637 to 1649, and 1661 to 1667f, real~~
~~5 estate settlement procedures act of 1974, Public Law 93 533, 88~~
~~6 Stat. 1724, equal credit opportunity act, title VII of the consumer~~
~~7 credit protection act, Public Law 90 321, 15 U.S.C. 1691 to 1691f,~~
~~8 fair housing act, title VIII of the civil rights act of 1968,~~
~~9 Public Law 90 284, 82 Stat. 81, fair credit report act, title VI of~~
~~10 the consumer credit protection act, Public Law 90 321, 15 U.S.C.~~
~~11 1681 to 1681v, the homeowners protection act of 1998, Public Law~~
~~12 105 216, 112 Stat. 897, the fair debt collection practices act,~~
~~13 title VIII of the consumer credit protection act, Public Law 90-~~
~~14 321, 15 U.S.C. 1601nt and 1692 to 1692o, consumer financial~~
~~15 services act, 1988 PA 161, MCL 487.2051 to 487.2072, mortgage~~
~~16 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL~~
~~17 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125,~~
~~18 MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601 to 445.1614, and~~
~~19 home improvement finance act, 1965 PA 332, MCL 445.1101 to~~
~~20 445.1422.~~

21 (Q) SUBJECT TO SUBSECTION (2), "POINTS AND FEES" MEANS ALL OF
 22 THE FOLLOWING:

23 (i) ALL ITEMS INCLUDED IN THE DEFINITION OF FINANCE CHARGE IN
 24 12 CFR 226.4(A) AND 12 CFR 226.4(B), EXCEPT INTEREST OR THE TIME
 25 PRICE DIFFERENTIAL.

26 (ii) ALL ITEMS DESCRIBED IN 12 CFR 226.32(B)(1)(iii).

27 (iii) ALL COMPENSATION PAID DIRECTLY OR INDIRECTLY TO A MORTGAGE

1 BROKER FROM ANY SOURCE, INCLUDING A MORTGAGE BROKER THAT ORIGINATES
2 A LOAN IN ITS OWN NAME OR IN A TABLE-FUNDED TRANSACTION.

3 (iv) THE COST OF ALL PREMIUMS DIRECTLY OR INDIRECTLY FINANCED
4 BY THE CREDITOR FOR ANY CREDIT LIFE, CREDIT DISABILITY, OR CREDIT
5 PROPERTY INSURANCE IN WHICH THE CREDITOR IS NAMED AS A BENEFICIARY,
6 OR ANY OTHER LIFE OR HEALTH INSURANCE, OR ANY PAYMENTS DIRECTLY OR
7 INDIRECTLY FINANCED BY THE CREDITOR FOR ANY DEBT CANCELLATION OR
8 SUSPENSION AGREEMENT OR CONTRACT. HOWEVER, INSURANCE PREMIUMS PAID
9 ON A MONTHLY BASIS OR DEBT CANCELLATION OR SUSPENSION FEES
10 CALCULATED AND PAID ON A MONTHLY BASIS ARE NOT CONSIDERED FINANCED
11 BY THE CREDITOR.

12 (v) THE MAXIMUM PREPAYMENT FEES AND PENALTIES THAT MAY BE
13 CHARGED OR COLLECTED UNDER THE TERMS OF THE LOAN DOCUMENTS.

14 (vi) ALL PREPAYMENT FEES OR PENALTIES THAT ARE INCURRED BY THE
15 BORROWER IF THE LOAN REFINANCES A PREVIOUS LOAN ORIGINATED OR
16 CURRENTLY HELD BY THE SAME CREDITOR OR AN AFFILIATE OF THE
17 CREDITOR.

18 (vii) FOR AN OPEN-END LOAN, POINTS AND FEES ARE CALCULATED BY
19 ADDING THE TOTAL POINTS AND FEES KNOWN AT OR BEFORE CLOSING,
20 INCLUDING THE MAXIMUM PREPAYMENT PENALTIES THAT MAY BE CHARGED OR
21 COLLECTED UNDER THE TERMS OF THE LOAN DOCUMENTS, PLUS THE MINIMUM
22 ADDITIONAL FEES THE BORROWER MUST PAY TO DRAW DOWN AN AMOUNT EQUAL
23 TO THE TOTAL CREDIT LINE.

24 (R) "RATE THRESHOLD" MEANS AN ANNUAL PERCENTAGE RATE THAT
25 EQUALS OR EXCEEDS THE RATE CALCULATED UNDER 12 CFR 226.32 (A) (1) (i) ,
26 WHETHER THE HOME LOAN IS A "RESIDENTIAL MORTGAGE TRANSACTION" OR AN
27 EXTENSION OF "OPEN-END CREDIT" AS THOSE TERMS ARE DEFINED IN 12 CFR

1 226.2.

2 (S) "TABLE-FUNDED TRANSACTION" MEANS A LOAN TRANSACTION CLOSED
3 BY A MORTGAGE BROKER IN THE MORTGAGE BROKER'S OWN NAME WITH FUNDS
4 ADVANCED BY A PERSON OTHER THAN THE MORTGAGE BROKER IN WHICH THE
5 LOAN IS ASSIGNED CONTEMPORANEOUSLY OR WITHIN 1 BUSINESS DAY OF THE
6 FUNDING OF THE LOAN TO THE PERSON THAT ADVANCES THE FUNDS.

7 (T) "THRESHOLD" MEANS A RATE THRESHOLD OR A TOTAL POINTS AND
8 FEES THRESHOLD.

9 (U) "TOTAL LOAN AMOUNT" MEANS THE PRINCIPAL OF THE LOAN MINUS
10 THOSE POINTS AND FEES DESCRIBED IN SUBSECTION (2) THAT ARE INCLUDED
11 IN THE PRINCIPAL AMOUNT OF THE LOAN. FOR AN OPEN-END LOAN, THE
12 TOTAL LOAN AMOUNT IS CALCULATED USING THE TOTAL LINE OF CREDIT
13 ALLOWED UNDER THE HOME LOAN AT CLOSING.

14 (V) "TOTAL POINTS AND FEES THRESHOLD" MEANS 1 OF THE
15 FOLLOWING, AS APPLICABLE:

16 (i) FOR A HOME LOAN IN WHICH THE TOTAL LOAN AMOUNT IS
17 \$20,000.00 OR MORE, THE TOTAL POINTS AND FEES PAYABLE IN CONNECTION
18 WITH THE HOME LOAN AFTER SUBTRACTING ANY EXCLUDED POINTS AND FEES
19 EXCEED 5% OF THE TOTAL LOAN AMOUNT.

20 (ii) FOR A HOME LOAN IN WHICH THE TOTAL LOAN AMOUNT IS LESS
21 THAN \$20,000.00, THE TOTAL POINTS AND FEES PAYABLE IN CONNECTION
22 WITH THE HOME LOAN AFTER SUBTRACTING ANY EXCLUDED POINTS AND FEES
23 EXCEED \$1,000.00 OR 8% OF THE TOTAL LOAN AMOUNT, WHICHEVER IS LESS.

24 (2) POINTS AND FEES DO NOT INCLUDE ANY OF THE FOLLOWING:

25 (A) TAXES, FILING FEES, RECORDING FEES, OR OTHER CHARGES OR
26 FEES PAID TO OR REQUIRED BY A PUBLIC OFFICIAL FOR DETERMINING THE
27 EXISTENCE OF OR FOR PERFECTING, RELEASING, OR SATISFYING A SECURITY

1 INTEREST.

2 (B) BONA FIDE AND REASONABLE FEES PAID TO A PERSON OTHER THAN
3 A CREDITOR OR AN AFFILIATE OF THE CREDITOR FOR ANY OF THE
4 FOLLOWING:

5 (i) TAX PAYMENT SERVICES.

6 (ii) FLOOD CERTIFICATION.

7 (iii) PEST INFESTATION OR FLOOD DETERMINATION.

8 (iv) APPRAISAL.

9 (v) INSPECTIONS PERFORMED BEFORE THE CLOSING.

10 (vi) CREDIT REPORTS.

11 (vii) SURVEYS.

12 (viii) ATTORNEY FEES, IF THE BORROWER HAS THE RIGHT TO SELECT
13 THE ATTORNEY FROM AN APPROVED LIST OR OTHERWISE.

14 (ix) NOTARY FEES.

15 (x) ESCROW CHARGES IN ADDITION TO ANY PAID UNDER SUBDIVISION
16 (A).

17 (xi) TITLE INSURANCE PREMIUMS.

18 (xii) FIRE AND HAZARD INSURANCE AND FLOOD INSURANCE PREMIUMS,
19 IF THE CONDITIONS IN 12 CFR 226.4(D)(2) ARE MET.

20 (xiii) FEES FOR PREPARING LOAN DOCUMENTS, INCLUDING, BUT NOT
21 LIMITED TO, DEEDS, MORTGAGES, AND SETTLEMENT DOCUMENTS.

22 (3) THIS ACT DOES NOT APPLY TO A DEPOSITORY FINANCIAL
23 INSTITUTION OR AN OPERATING SUBSIDIARY OF A DEPOSITORY FINANCIAL
24 INSTITUTION.

25 Sec. 3. (1) ~~A person shall broker, make, or service mortgage~~
26 ~~loans in accordance with all applicable state and federal laws. A~~
27 CREDITOR SHALL NOT DIRECTLY OR INDIRECTLY FINANCE ANY CREDIT LIFE,

1 CREDIT DISABILITY, OR CREDIT UNEMPLOYMENT INSURANCE IN WHICH THE
2 CREDITOR IS NAMED AS A BENEFICIARY, ANY OTHER LIFE OR HEALTH
3 INSURANCE, OR ANY PAYMENTS DIRECTLY OR INDIRECTLY FOR ANY DEBT
4 CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACT. HOWEVER,
5 INSURANCE PREMIUMS OR DEBT CANCELLATION OR SUSPENSION FEES
6 CALCULATED AND PAID IN EQUAL MONTHLY INSTALLMENTS ARE NOT
7 CONSIDERED FINANCED BY THE CREDITOR.

8 (2) A CREDITOR SHALL NOT KNOWINGLY OR INTENTIONALLY MAKE A
9 HOME LOAN TO A BORROWER THAT REFINANCES AN EXISTING HOME LOAN IF
10 THE NEW LOAN DOES NOT HAVE REASONABLE, TANGIBLE NET BENEFIT TO THE
11 BORROWER CONSIDERING ALL OF THE CIRCUMSTANCES. AS USED IN THIS
12 SUBSECTION, "REASONABLE, TANGIBLE NET BENEFIT" INCLUDES, BUT IS NOT
13 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

14 (A) THE BORROWER RECEIVES AN AMOUNT OF CASH-OUT FROM THE NEW
15 LOAN THAT IS EQUAL TO OR MORE THAN 1-1/2 TIMES THE AMOUNT OF
16 BORROWER-PAID CLOSING COSTS THAT ARE IMPOSED BY THE CREDITOR FOR
17 ORIGINATING THE LOAN, AS DISCLOSED ON THE HUD-1 SETTLEMENT
18 STATEMENT, PLUS THE AMOUNT OF ANY PREPAYMENT PENALTY PAID ON THE
19 REFINANCED LOAN.

20 (B) THERE IS A BENEFICIAL CHANGE FOR THE BORROWER IN THE NEW
21 LOAN, INCLUDING, BUT NOT LIMITED TO, A REDUCTION IN THE TERM OF THE
22 REFINANCED LOAN; THE NEW LOAN REFINANCES AN ADJUSTABLE RATE
23 MORTGAGE THAT IS APPROACHING THE INTEREST RATE RESET DATE; THE NEW
24 LOAN CONVERTS AN ADJUSTABLE RATE LOAN TO A FIXED RATE LOAN; THE NEW
25 LOAN CONVERTS A BALLOON LOAN TO A LOAN WITHOUT A BALLOON PAYMENT;
26 THE NEW LOAN EXTENDS THE TERM OF THE LOAN TO REDUCE THE AMOUNT OF
27 THE INSTALLMENT PAYMENTS; OR THE NEW LOAN CONVERTS A NON-FULLY

1 AMORTIZED LOAN TO A FULLY AMORTIZED LOAN THAT REQUIRES PRINCIPAL
2 REDUCTION WITH EACH PAYMENT. HOWEVER, A NEW LOAN DOES NOT HAVE A
3 REASONABLE, TANGIBLE NET BENEFIT UNDER THIS SUBDIVISION IF THE LOAN
4 IS REFINANCED INTO AN ADJUSTABLE RATE LOAN WITH A FIXED-RATE TERM
5 OF FEWER THAN 3 YEARS OR IF THE BORROWER WILL NOT RECOUP THE TOTAL
6 COST OF THE REFINANCING WITHIN 4 YEARS.

7 (C) THE LOAN IS TO PAY THE BALANCE OF A LAND CONTRACT;
8 REFINANCE A LEASE OPTION; OR REMOVE OR BUY OUT ANOTHER BORROWER
9 FROM A MORTGAGE OR FROM THE TITLE TO A MORTGAGED DWELLING, WITH A
10 COURT ORDER OR OTHER EVIDENCE THAT THE OTHER BORROWER NO LONGER
11 RESIDES IN THAT DWELLING.

12 (D) THE NEW LOAN IS FOR DEBT CONSOLIDATION, CURING OF
13 DELINQUENT DEBTS, REFINANCING TO A LOWER LOAN-TO-VALUE RATIO, OR
14 OTHER FINANCIAL IMPROVEMENT. HOWEVER, THIS SUBDIVISION IS NOT MET
15 IF THE LOAN IS REFINANCED INTO AN ADJUSTABLE RATE LOAN WITH A
16 FIXED-RATE TERM OF FEWER THAN 3 YEARS OR IF THE BORROWER WILL NOT
17 RECOUP THE TOTAL COST OF THE REFINANCING WITHIN 4 YEARS.

18 (E) REFINANCING IS NECESSARY TO RESPOND TO A BONA FIDE
19 PERSONAL NEED OF THE BORROWER. FOR PURPOSES OF THIS SUBDIVISION,
20 THERE IS A BONA FIDE PERSONAL NEED IF THE BORROWER CAN PROVIDE
21 VERIFIABLE SUPPORTING DOCUMENTATION OF ANY OF THE FOLLOWING:

22 (i) THE REFINANCE TRANSACTION WAS ORDERED BY A COURT OF
23 COMPETENT JURISDICTION.

24 (ii) THE PROPERTY SUBJECT TO THE MORTGAGE IS IN A FORECLOSURE
25 PROCEEDING.

26 (iii) THE REFINANCE TRANSACTION IS NECESSARY TO REFINANCE A
27 CONSTRUCTION LOAN INTO A PERMANENT LOAN.

1 (iv) THE BORROWER IS SUBJECT TO AN IMMINENT THREAT OF
2 BANKRUPTCY.

3 (v) THE REFINANCE TRANSACTION IS NECESSARY TO REMOVE A LIEN ON
4 THE PROPERTY IMPOSED BY A FEDERAL, STATE, OR LOCAL GOVERNMENT
5 AGENCY OR COURT, INCLUDING, BUT NOT LIMITED TO, A TAX OR MECHANIC'S
6 LIEN.

7 (vi) THE BORROWER OR A MEMBER OF THE IMMEDIATE FAMILY OF THE
8 BORROWER HAS A MEDICAL PROBLEM REQUIRING PROMPT MEDICAL SERVICES OR
9 PRESCRIPTION DRUGS.

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

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

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

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

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

1 PAYMENTS DUE.

2 (5) A HOME LOAN MAY NOT CONTAIN A PROVISION THAT PERMITS THE
3 CREDITOR IN ITS SOLE DISCRETION TO ACCELERATE THE INDEBTEDNESS.
4 THIS SUBSECTION DOES NOT PROHIBIT ACCELERATION OF THE LOAN IN GOOD
5 FAITH DUE TO THE BORROWER'S FAILURE TO ABIDE BY THE MATERIAL TERMS
6 OF THE LOAN.

7 (6) A CREDITOR SHALL NOT CHARGE A FEE FOR VERBALLY INFORMING A
8 PERSON OF THE BALANCE DUE TO PAY OFF A HOME LOAN. A CREDITOR SHALL
9 NOT CHARGE A PERSON A FEE FOR TRANSMITTING 1 WRITTEN STATEMENT OF
10 THE BALANCE DUE TO PAY OFF A HOME LOAN WITHIN A 12-MONTH PERIOD. A
11 CREDITOR MAY CHARGE A FEE THAT DOES NOT EXCEED \$25.00 TO PROVIDE A
12 SECOND WRITTEN STATEMENT OF THE BALANCE DUE TO PAY OFF A HOME LOAN
13 WITHIN A 12-MONTH PERIOD. IF A PERSON REQUESTS MORE THAN 2 WRITTEN
14 STATEMENTS OF THE BALANCE DUE TO PAY OFF A HOME LOAN WITHIN A 12-
15 MONTH PERIOD, A CREDITOR MAY CHARGE A REASONABLE FEE FOR ANY
16 ADDITIONAL WRITTEN STATEMENTS TRANSMITTED TO THAT PERSON.

17 (7) A CREDITOR SHALL PROVIDE A WRITTEN STATEMENT OF THE
18 BALANCE DUE TO PAY OFF A LOAN UNDER SUBSECTION (6) WITHIN 7
19 BUSINESS DAYS AFTER THE REQUEST IS MADE.

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

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

1 (B) MATERIALLY MISCHARACTERIZE A BORROWER'S CREDIT HISTORY OR
2 THE HOME LOANS AVAILABLE TO A BORROWER FROM THE CREDITOR.

3 (C) MATERIALLY MISCHARACTERIZE THE APPRAISAL VALUE OF A
4 DWELLING.

5 (D) IF UNABLE TO SUGGEST, OFFER, OR RECOMMEND TO A BORROWER A
6 REASONABLY ADVANTAGEOUS HOME LOAN, DISCOURAGE A BORROWER FROM
7 SEEKING A HOME LOAN FROM ANOTHER CREDITOR.

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

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

15 (11) A CREDITOR SHALL NOT EXTEND A HOME LOAN TO A BORROWER
16 UNLESS THE CREDITOR REASONABLY DETERMINES AT THE TIME THE HOME LOAN
17 IS CONSUMMATED THAT THE BORROWER IS ABLE TO REPAY THE LOAN
18 ACCORDING TO THE LOAN TERMS. SUBJECT TO SUBSECTION (12), ALL OF THE
19 FOLLOWING APPLY TO A CREDITOR'S DETERMINATION UNDER THIS
20 SUBSECTION:

21 (A) IF THE CREDITOR MAKING THE HOME LOAN KNOWS THAT 1 OR MORE
22 MORTGAGE LOANS SECURED BY THE SAME REAL PROPERTY WILL BE MADE
23 CONTEMPORANEOUSLY WITH THE HOME LOAN TO THE SAME BORROWER, THE
24 CREDITOR MUST CONSIDER THE BORROWER'S ABILITY TO REPAY THE COMBINED
25 PAYMENTS OF ALL LOANS ON THE SAME REAL PROPERTY.

26 (B) THE CREDITOR MAY USE ANY REASONABLE METHOD TO DETERMINE A
27 BORROWER'S ABILITY TO REPAY THE HOME LOAN, INCLUDING, BUT NOT

1 LIMITED TO, CONSIDERATION OF ANY OF THE FOLLOWING:

2 (i) THE BORROWER'S VERIFIED CURRENT AND EXPECTED INCOME,
3 CURRENT AND EXPECTED OBLIGATIONS, EMPLOYMENT STATUS OR TYPE OF
4 EMPLOYMENT, HISTORY OF EMPLOYMENT, CREDIT HISTORY, CREDIT SCORE,
5 RESIDUAL INCOME, OR DEBT-TO-INCOME RATIO.

6 (ii) THE AMOUNT OF THE MONTHLY PAYMENT FOR THE HOME LOAN,
7 INCLUDING PRINCIPAL, INTEREST, PROPERTY TAXES, AND HAZARD INSURANCE
8 PREMIUMS.

9 (iii) OTHER FINANCIAL RESOURCES AVAILABLE TO THE BORROWER OTHER
10 THAN THE BORROWER'S EQUITY IN THE PRINCIPAL DWELLING THAT SECURES
11 OR WILL SECURE THE HOME LOAN.

12 (C) THE CREDITOR MAY USE ANY OF THE FOLLOWING CALCULATION
13 ASSUMPTIONS IN EVALUATING A BORROWER'S ABILITY TO REPAY THE HOME
14 LOAN:

15 (i) THAT THE LOAN PROCEEDS ARE FULLY DISBURSED ON THE DATE OF
16 THE LOAN CLOSING.

17 (ii) THAT THE LOAN IS TO BE REPAYED IN SUBSTANTIALLY EQUAL
18 MONTHLY AMORTIZING PAYMENTS OF PRINCIPAL AND INTEREST OVER THE
19 ENTIRE TERM OF THE LOAN, WITH NO BALLOON PAYMENT.

20 (iii) THAT THE INTEREST RATE OVER THE ENTIRE TERM OF THE LOAN IS
21 A FIXED RATE EQUAL TO THE FULLY INDEXED INTEREST RATE AT THE TIME
22 OF THE LOAN CLOSING, WITHOUT CONSIDERING ANY INITIAL DISCOUNTED
23 RATE. AS USED IN THIS SUBPARAGRAPH, THE "FULLY INDEXED INTEREST
24 RATE AT THE TIME OF THE LOAN CLOSING" IS THE INTEREST RATE THAT
25 WOULD HAVE APPLIED AT THE TIME OF CLOSING IF THE INITIAL INTEREST
26 RATE BEEN DETERMINED BY THE APPLICATION OF THE SAME INTEREST RATE
27 FORMULA (FOR EXAMPLE, AN INTEREST RATE INDEX PLUS OR MINUS A

1 MARGIN) THAT APPLIES UNDER THE TERMS OF THE LOAN DOCUMENTS TO
2 SUBSEQUENT INTEREST RATE ADJUSTMENTS, DISREGARDING ANY LIMITATIONS
3 ON THE AMOUNT BY WHICH THE INTEREST RATE MAY CHANGE AT ANY 1 TIME.

4 (D) IF THE TERMS OF THE HOME LOAN PERMIT NEGATIVE
5 AMORTIZATION, THE REPAYMENT ANALYSIS SHALL BE BASED ON THE INITIAL
6 LOAN AMOUNT PLUS ANY BALANCE INCREASE THAT MAY ACCRUE FROM THE
7 NEGATIVE AMORTIZATION PROVISION.

8 (12) FOR PURPOSES OF SUBSECTION (11), THE USE OF AN AUTOMATED
9 UNDERWRITING SYSTEM THAT COMPLIES WITH THE PROVISIONS OF SUBSECTION
10 (11) TO UNDERWRITE, APPROVE, ACCEPT, OR OTHERWISE IDENTIFY A HOME
11 LOAN AS MEETING ACCEPTABLE CREDIT STANDARDS CONSTITUTES A
12 REASONABLE METHOD FOR DETERMINING A BORROWER'S ABILITY TO REPAY A
13 HOME LOAN.

14 (13) IT IS AN AFFIRMATIVE DEFENSE TO AN ACTION UNDER THIS ACT
15 BY A BORROWER AGAINST A CREDITOR IF THE CREDITOR RELIED UPON 1 OR
16 MORE DELIBERATE MATERIAL MISSTATEMENTS, MISREPRESENTATIONS, OR
17 OMISSIONS MADE BY THE BORROWER IN A HOME LOAN APPLICATION OR OTHER
18 LOAN DOCUMENT.

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

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

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

25 (C) CHARGE AN APPLICATION FEE.

26 ~~—— (2) A lender in making a mortgage loan shall not finance as~~
27 ~~part of the loan single premium coverage for any credit life,~~

1 ~~credit disability, or credit unemployment.~~

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

8 (3) ~~(4)~~—A ~~lender~~ **CREDITOR** shall not insert or change
 9 information on an application for a ~~mortgage~~ **HOME** loan if the
 10 ~~lender~~ **CREDITOR** knows that the information is false and misleading
 11 and intended to deceive a third party that the borrower is
 12 qualified for the loan ~~when~~ **IF** in fact the third party would not
 13 approve the loan without the insertion or change.

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

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

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

23 ~~—— (c) Whether it may be reasonably comprehended by the segment~~
 24 ~~of the public to which the statement is directed.~~

25 (4) ~~(6)~~—A ~~lender~~ **CREDITOR** shall not condition the payment of
 26 an appraisal upon a predetermined value or the closing of the
 27 ~~mortgage~~ **HOME** loan ~~which~~ **THAT** is the basis of the appraisal.

1 (5) ~~(7)~~ A person shall not directly or indirectly compensate,
2 coerce, or intimidate an appraiser for the purpose of influencing
3 the independent judgment of the appraiser with respect to the value
4 of the dwelling offered as security for repayment of ~~the mortgage~~ **A**
5 **HOME** loan.

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

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

19 (A) A CREDITOR SHALL NOT DIRECTLY OR INDIRECTLY FINANCE ANY
20 POINTS OR FEES IN EXCESS OF 2% OF THE LOAN AMOUNT IN CONNECTION
21 WITH A HIGH-COST HOME LOAN.

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

25 (C) A HIGH-COST HOME LOAN SHALL NOT CONTAIN A SCHEDULED
26 PAYMENT THAT IS MORE THAN TWICE AS LARGE AS THE AVERAGE OF EARLIER
27 SCHEDULED PAYMENTS. THIS SUBDIVISION DOES NOT APPLY WHEN THE

1 PAYMENT SCHEDULE IS ADJUSTED TO THE SEASONAL OR IRREGULAR INCOME OF
2 THE BORROWER.

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

8 (E) A HIGH-COST HOME LOAN SHALL NOT CONTAIN A PROVISION THAT
9 INCREASES THE INTEREST RATE AFTER DEFAULT. THIS SUBDIVISION DOES
10 NOT APPLY TO INTEREST RATE CHANGES IN A VARIABLE RATE LOAN
11 OTHERWISE CONSISTENT WITH THE PROVISIONS OF THE LOAN DOCUMENTS, IF
12 THE CHANGE IN THE INTEREST RATE IS NOT TRIGGERED BY THE EVENT OF
13 DEFAULT OR THE ACCELERATION OF THE INDEBTEDNESS.

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

18 (G) A CREDITOR SHALL NOT MAKE A HIGH-COST HOME LOAN WITHOUT
19 FIRST RECEIVING CERTIFICATION FROM A COUNSELOR FROM AN INDEPENDENT
20 NONPROFIT ORGANIZATION APPROVED BY THE UNITED STATES DEPARTMENT OF
21 HOUSING AND URBAN DEVELOPMENT, BY A STATE HOUSING FINANCING AGENCY,
22 OR BY THE REGULATORY AGENCY THAT HAS JURISDICTION OVER THE
23 CREDITOR, THAT THE BORROWER HAS RECEIVED COUNSELING ON THE
24 ADVISABILITY OF THE LOAN TRANSACTION. A COUNSELOR OR COUNSELING
25 AGENCY THAT IS AFFILIATED WITH A MORTGAGE BROKER OR MORTGAGE
26 LENDER, AS THOSE TERMS ARE DEFINED IN SECTION 1A OF THE MORTGAGE
27 BROKERS, LENDERS, AND SERVICERS LICENSING ACT, 1987 PA 173, MCL

1 445.1651A, IS NOT CONSIDERED AN INDEPENDENT NONPROFIT ORGANIZATION
2 FOR PURPOSES OF THIS SUBSECTION.

3 (H) A CREDITOR SHALL NOT PAY A CONTRACTOR UNDER A HOME-
4 IMPROVEMENT CONTRACT FROM THE PROCEEDS OF A HIGH-COST HOME LOAN,
5 UNLESS THE INSTRUMENT IS PAYABLE TO THE BORROWER OR JOINTLY TO THE
6 BORROWER AND THE CONTRACTOR OR, AT THE ELECTION OF THE BORROWER,
7 THROUGH A THIRD-PARTY ESCROW AGENT IN ACCORDANCE WITH TERMS
8 ESTABLISHED IN A WRITTEN AGREEMENT SIGNED BY THE BORROWER, THE
9 CREDITOR, AND THE CONTRACTOR BEFORE THE DISBURSEMENT.

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

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

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

20 Sec. 6. At the time a person applies for a ~~mortgage~~ HOME loan,
21 the ~~lender~~ CREDITOR shall provide the applicant the following
22 document:

23 "BORROWERS BILL OF RIGHTS

24 1. You have the RIGHT to shop for the best loan for you and
25 compare the charges of different mortgage brokers and lenders.

26 2. You have the RIGHT to be informed about the total cost of
27 your loan including the interest rate, points, and other fees.

1 3. You have the RIGHT to obtain a "Good Faith Estimate" of all
2 loan and settlement charges before you agree to the loan or pay any
3 fees.

4 4. You have the RIGHT to know what fees are nonrefundable if
5 you decide to withdraw your loan application.

6 5. You have the RIGHT to ask your mortgage broker to explain
7 exactly what the mortgage broker will do for you.

8 6. You have the RIGHT to know how much the mortgage broker is
9 getting paid by you and the lender for your loan.

10 7. You have the RIGHT to ask questions about charges and loan
11 terms that you do not understand.

12 8. You have the RIGHT to a credit decision that is not based
13 on your race, color, religion, national origin, sex, marital
14 status, age, or whether any income is derived from public
15 assistance.

16 9. You have the RIGHT to know the reason if your loan
17 application is turned down.".

18 ~~10. You have the RIGHT to receive the HUD settlement costs~~
19 ~~booklet "Buying Your Home"."~~

20 Sec. 7. At the time a person applies for a ~~mortgage~~**HOME** loan,
21 the ~~lender~~**CREDITOR** shall provide the applicant the following
22 written notice regarding the value of receiving credit counseling
23 before taking out a ~~mortgage~~**HOME** loan and a list of the nearest
24 available HUD-approved credit counseling agencies:

25 "CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

26 If you obtain this loan, the lender will have a mortgage on
27 your home. You could lose your home, and all money you have

1 invested in it, if you do not meet your obligations under the loan,
2 including making all your payments.

3 Mortgage loans rates and closing costs and fees vary based on
4 many factors, including your particular credit and financial
5 circumstances, your earnings history, the loan-to-value requested,
6 and the type of property that will secure your loan. Higher rates
7 and fees may be applicable depending on the individual
8 circumstances of a particular consumer's application.

9 You should shop around and compare loan rates and fees. This
10 particular loan may have a higher rate and total points and fees
11 than other mortgage loans. You should consider consulting a
12 qualified independent credit counselor or other experienced
13 financial adviser regarding the rate, fees, and provisions of this
14 mortgage loan before you proceed. For information on contacting a
15 qualified credit counselor, ask your lender ~~or call the United~~
16 ~~States Department of Housing and Urban Development's counseling~~
17 ~~hotline at 1-888-466-3487~~ for a list of counselors.

18 You are not required to complete any loan agreement merely
19 because you have received these disclosures or have signed a loan
20 application. If you proceed with this mortgage loan, you should
21 also remember that you may face serious financial risks if you use
22 this loan to pay off credit card debts and other debts in
23 connection with this transaction and then subsequently incur
24 significant new credit card charges or other debts.

25 Property taxes and homeowner's insurance are your
26 responsibility. Not all lenders provide escrow services for these
27 payments. You should ask your lender about these services.

1 Your payments on existing debts contribute to your credit
2 ratings. You should not accept any advice to ignore your regular
3 payments to your existing creditors.".

4 **SEC. 7A. (1) ANY PERSON WHO PURCHASES OR IS OTHERWISE ASSIGNED**
5 **A HIGH-COST HOME LOAN IS SUBJECT TO ALL AFFIRMATIVE CLAIMS AND ANY**
6 **DEFENSES WITH RESPECT TO THE LOAN THAT THE BORROWER COULD ASSERT**
7 **AGAINST THE ORIGINAL CREDITOR OF THE LOAN. HOWEVER, THIS SUBSECTION**
8 **DOES NOT APPLY IF THE PURCHASER OR ASSIGNEE DEMONSTRATES BY A**
9 **PREPONDERANCE OF THE EVIDENCE THAT IT MEETS ALL OF THE FOLLOWING:**

10 **(A) AT THE TIME OF THE PURCHASE OR ASSIGNMENT OF THE SUBJECT**
11 **LOANS, HAS IN PLACE POLICIES THAT EXPRESSLY PROHIBIT ITS PURCHASE**
12 **OR ACCEPTANCE OF ASSIGNMENT OF ANY HIGH-COST HOME LOANS.**

13 **(B) REQUIRES BY CONTRACT THAT A SELLER OR ASSIGNOR OF HOME**
14 **LOANS TO THE PURCHASER OR ASSIGNEE REPRESENTS AND WARRANTS 1 OF THE**
15 **FOLLOWING TO THE PURCHASER OR ASSIGNEE:**

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

18 **(ii) THAT THE SELLER OR ASSIGNOR IS A BENEFICIARY OF A**
19 **REPRESENTATION AND WARRANTY FROM A PREVIOUS SELLER OR ASSIGNOR TO**
20 **THAT EFFECT.**

21 **(C) EXERCISES REASONABLE DUE DILIGENCE AT THE TIME OF PURCHASE**
22 **OR ASSIGNMENT OF HOME LOANS OR WITHIN A REASONABLE PERIOD OF TIME**
23 **AFTER THE PURCHASE OR ASSIGNMENT OF THOSE HOME LOANS, INTENDED BY**
24 **THE PURCHASER OR ASSIGNEE TO PREVENT THE PURCHASER OR ASSIGNEE FROM**
25 **PURCHASING OR TAKING ASSIGNMENT OF ANY HIGH-COST HOME LOANS.**

26 **HOWEVER, FOR PURPOSES OF THIS SUBDIVISION, REASONABLE DUE DILIGENCE**
27 **SHALL PROVIDE FOR SAMPLING AND SHALL NOT REQUIRE LOAN-BY-LOAN**

1 REVIEW.

2 (2) LIMITED TO AN AMOUNT EQUAL TO THE MONTHLY PAYMENTS ALREADY
3 MADE UNDER THE LOAN AGREEMENT, ANY FINANCE CHARGES OTHER THAN THOSE
4 ALREADY COLLECTED IN THE MONTHLY PAYMENTS MADE UNDER A HOME LOAN,
5 FORFEITURE OF FUTURE INTEREST ON THE LOAN, REASONABLE COSTS, AND
6 REASONABLE ATTORNEY FEES, A BORROWER ACTING ONLY IN AN INDIVIDUAL
7 CAPACITY MAY ASSERT CLAIMS THAT THE BORROWER COULD ASSERT AGAINST
8 THE CREDITOR OF THE HOME LOAN AGAINST ANY SUBSEQUENT HOLDER OR
9 ASSIGNEE OF THE HOME LOAN AS FOLLOWS:

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

13 (B) AT ANY TIME DURING THE TERM OF A HIGH-COST HOME LOAN,
14 AFTER AN ACTION TO COLLECT ON THE HOME LOAN OR FORECLOSE ON THE
15 COLLATERAL SECURING THE HOME LOAN HAS BEEN INITIATED OR THE DEBT
16 ARISING FROM THE HOME LOAN HAS BEEN ACCELERATED OR THE HOME LOAN
17 HAS BECOME 60 DAYS IN DEFAULT, ANY DEFENSE, CLAIM OR COUNTERCLAIM,
18 OR ACTION TO ENJOIN FORECLOSURE OR PRESERVE OR OBTAIN POSSESSION OF
19 THE HOME THAT SECURES THE LOAN.

20 (3) THE PROVISIONS OF THIS SECTION ARE EFFECTIVE
21 NOTWITHSTANDING ANY OTHER PROVISION OF LAW. HOWEVER, THIS SECTION
22 SHALL NOT BE CONSTRUED TO LIMIT THE SUBSTANTIVE RIGHTS, REMEDIES,
23 OR PROCEDURAL RIGHTS AVAILABLE TO A BORROWER AGAINST ANY CREDITOR,
24 ASSIGNEE, OR HOLDER UNDER ANY OTHER LAW. THE RIGHTS CONFERRED ON
25 BORROWERS BY SUBSECTIONS (1) AND (2) ARE INDEPENDENT OF EACH OTHER
26 AND DO NOT LIMIT EACH OTHER.

27 SEC. 7B. (1) SUBJECT TO SUBSECTIONS (8) AND (9), IN A CIVIL

1 ACTION, IF A PERSON IS FOUND BY A PREPONDERANCE OF THE EVIDENCE TO
2 HAVE VIOLATED THIS ACT, THE COURT MAY AWARD THE BORROWER ALL OF THE
3 FOLLOWING:

4 (A) ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND INCIDENTAL
5 DAMAGES. A BORROWER IS NOT REQUIRED TO DEMONSTRATE RELIANCE IN
6 ORDER TO RECEIVE ACTUAL DAMAGES.

7 (B) FOR A VIOLATION OF SECTION 3 OR 4, STATUTORY DAMAGES IN AN
8 AMOUNT EQUAL TO THE MONTHLY PAYMENTS ALREADY MADE UNDER THE LOAN
9 AGREEMENT, ANY FINANCE CHARGES OTHER THAN THOSE ALREADY COLLECTED
10 IN THE MONTHLY PAYMENTS MADE UNDER THE LOAN AND FORFEITURE OF
11 FUTURE INTEREST ON THE LOAN.

12 (C) IF THE VIOLATION IS MALICIOUS OR RECKLESS, PUNITIVE
13 DAMAGES.

14 (D) COSTS AND REASONABLE ATTORNEY FEES.

15 (2) THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY FOR THE
16 COUNTY WHERE AN ALLEGED VIOLATION OCCURRED, OR A BORROWER MAY BRING
17 AN ACTION AGAINST A PERSON FOR INJUNCTIVE, DECLARATORY, AND ANY
18 OTHER EQUITABLE RELIEF TO ENFORCE COMPLIANCE WITH THIS ACT.

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

25 (4) FOR PURPOSES OF THIS SECTION, A CREDITOR OR ASSIGNEE IN A
26 HOME LOAN WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS ACT WHILE
27 ACTING IN GOOD FAITH IS NOT IN VIOLATION OF THIS ACT IF THAT

1 CREDITOR OR ASSIGNEE ESTABLISHES EITHER OF THE FOLLOWING:

2 (A) WITHIN 60 DAYS OF THE LOAN CLOSING, AND BEFORE RECEIVING
3 ANY NOTICE OF THE COMPLIANCE FAILURE, THE CREDITOR OR ASSIGNEE MADE
4 APPROPRIATE RESTITUTION TO THE BORROWER AND APPROPRIATE ADJUSTMENTS
5 TO THE LOAN.

6 (B) WITHIN 90 DAYS OF THE LOAN CLOSING AND BEFORE RECEIVING
7 ANY NOTICE OF THE COMPLIANCE FAILURE, AND THE COMPLIANCE FAILURE
8 WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR
9 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO
10 AVOID THOSE ERRORS, THE BORROWER IS NOTIFIED OF THE COMPLIANCE
11 FAILURE, APPROPRIATE RESTITUTION IS MADE TO THE BORROWER, AND
12 APPROPRIATE ADJUSTMENTS ARE MADE TO THE LOAN. AS USED IN THIS
13 SUBSECTION, A "BONA FIDE ERROR" INCLUDES, BUT IS NOT LIMITED TO, A
14 COMPUTER MALFUNCTION OR A CLERICAL, CALCULATION, COMPUTER
15 PROGRAMMING, OR PRINTING ERROR. AN ERROR OF LEGAL JUDGMENT WITH
16 RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS SECTION IS NOT A BONA
17 FIDE ERROR.

18 (5) THE REMEDIES PROVIDED IN THIS SECTION ARE CUMULATIVE AND
19 ARE NOT THE EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER. A BORROWER
20 IS NOT REQUIRED TO EXHAUST ANY ADMINISTRATIVE REMEDIES PROVIDED
21 UNDER THIS ACT OR ANY OTHER APPLICABLE LAW BEFORE PROCEEDING UNDER
22 THIS SECTION.

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

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

8 (8) A BORROWER MAY ONLY ASSERT A CLAIM UNDER THIS ACT ON HIS
9 OR HER OWN BEHALF AND MAY NOT ASSERT CLAIMS ON BEHALF OF SIMILARLY
10 SITUATED BORROWERS.

11 (9) A BORROWER WHO IS ILLEGALLY RESIDING IN THE UNITED STATES
12 MAY NOT ASSERT A CLAIM UNDER THIS ACT.

13 Sec. 8. (1) The commissioner may conduct examinations and
14 investigations of a person over ~~whom~~ WHICH the commissioner has
15 regulatory authority as necessary to determine whether the person
16 is brokering, making, servicing, or collecting ~~mortgage~~ HOME loans
17 as required by this act.

18 (2) THE COMMISSIONER MAY PROMULGATE REASONABLE RULES UNDER THE
19 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
20 24.328, AS NECESSARY TO IMPLEMENT AND ADMINISTER THIS ACT.

21 (3) THE COMMISSIONER MAY PROVIDE GUIDANCE TO ANY PERSON OVER
22 WHICH THE COMMISSIONER HAS REGULATORY AUTHORITY ON THE APPLICATION
23 OF AND COMPLIANCE WITH THIS ACT.

24 Sec. 9. If the commissioner determines that a person is
25 brokering, making, servicing, or collecting ~~mortgage~~ HOME loans in
26 violation of this act, the commissioner shall do 1 or more of the
27 following:

1 (a) Initiate a cause of action under section 10.

2 (b) If the person is chartered, licensed, registered,
3 regulated, or administered by the commissioner under a law of this
4 state, the commissioner shall enforce the penalties and remedies
5 under that law.

6 (c) Forward a complaint to the appropriate regulatory or
7 investigatory authority.

8 Sec. 10. (1) The attorney general or the prosecuting attorney
9 for the county where an alleged violation occurred may bring an
10 action against a person to do 1 or more of the following:

11 (a) Obtain a declaratory judgment that a method, act, or
12 practice of the person is a violation of this act.

13 (b) Enjoin a person who is engaging or about to engage in a
14 method, act, or practice that is a violation of this act.

15 (c) Obtain a civil fine ~~of not more than \$10,000.00 for the~~
16 ~~first offense and not more than \$20,000.00 for the second and any~~
17 ~~subsequent offense~~ UNDER SUBSECTION (2).

18 (2) IN ADDITION TO ANY OTHER REMEDIES OR PENALTIES IMPOSED BY
19 THIS ACT, A CREDITOR, A MEMBER, OFFICER, DIRECTOR, OR EMPLOYEE OF A
20 CREDITOR, OR ANY OTHER PERSON THAT VIOLATES THIS ACT OR AN ORDER
21 MADE OR RULE PROMULGATED UNDER THIS ACT, OR DIRECTLY OR INDIRECTLY
22 COUNSELS, AIDS, OR ABETS IN A VIOLATION, IS RESPONSIBLE FOR A CIVIL
23 FINE OF NOT MORE THAN \$3,000.00 FOR EACH VIOLATION, EXCEPT THAT A
24 PERSON SHALL NOT BE FINED MORE THAN \$30,000.00 FOR A TRANSACTION
25 RESULTING IN MORE THAN 1 VIOLATION, PLUS THE COSTS OF
26 INVESTIGATION.

27 Sec. 11. ~~(1) A person is not liable for a violation under~~

1 ~~section 10 if the person shows that the violation was an~~
2 ~~unintentional and bona fide error notwithstanding the maintenance~~
3 ~~of procedures reasonably adopted to avoid the error. Examples of a~~
4 ~~bona fide error include clerical, calculation, computer~~
5 ~~malfunction, programming, or printing errors. An error in legal~~
6 ~~judgment with respect to a person's obligations under this act is~~
7 ~~not a bona fide error.~~

8 ~~—— (2) A person is not liable for a violation under section 10~~
9 ~~if, within 60 days after discovery of the violation and before the~~
10 ~~institution of an action under section 10, the person notifies the~~
11 ~~borrower or buyer of the violation and corrects the violation in a~~
12 ~~manner that, to the extent it is reasonably possible to do so,~~
13 ~~restores the borrower or buyer to the position in which the~~
14 ~~borrower or buyer would have been if the violation had not~~
15 ~~occurred.~~

16 ~~—— (3) The person alleged to have violated this act has the~~
17 ~~burden of proving that he or she is not liable as provided under~~
18 ~~this section. A CREDITOR, A MEMBER, OFFICER, DIRECTOR, OR EMPLOYEE~~
19 ~~OF A CREDITOR, OR ANY OTHER PERSON THAT KNOWINGLY VIOLATES THIS ACT~~
20 ~~OR AN ORDER MADE OR RULE PROMULGATED UNDER THIS ACT IS GUILTY OF A~~
21 ~~MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$15,000.00,~~
22 ~~IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH.~~

23 Sec. 12. (1) This act does not limit the authority of the
24 commissioner, the attorney general, or a county prosecutor to
25 enforce any law under which a person is chartered, organized,
26 licensed, registered, regulated, or otherwise authorized to do
27 business in this state.

1 (2) THE RIGHTS CONFERRED BY THIS ACT ARE INDEPENDENT OF AND IN
2 ADDITION TO ANY OTHER RIGHTS UNDER STATE OR FEDERAL LAW.

3 Sec. 13. ~~(1) No later than December 31, 2003, the office of~~
4 ~~financial and insurance services shall develop and make available~~
5 ~~to local units of government, financial institutions, and other~~
6 ~~interested persons 1 or more model programs for financial~~
7 ~~education.~~

8 ~~— (2) The program required under this section shall be designed~~
9 ~~to teach personal financial management skills and the basic~~
10 ~~principles involved with saving, borrowing, investing, and~~
11 ~~protection against predatory and other fraudulent lending~~
12 ~~practices. THIS ACT APPLIES TO ANY HOME LOAN OR OTHER TRANSACTIONS~~
13 ~~GOVERNED BY THIS ACT CONCERNING REAL PROPERTY LOCATED IN THIS~~
14 ~~STATE.~~

15 Sec. 14. (1) The federal government and state solely regulate
16 the business of brokering, making, servicing, and collecting
17 ~~mortgage~~**HOME** loans in this state and the manner in which ~~any such~~
18 **THAT** business is conducted.

19 (2) Any charter, ordinance, resolution, regulation, rule, or
20 other action by a municipal corporation or other political
21 subdivision of this state to regulate, directly or indirectly, the
22 brokering, making, servicing, or collecting of ~~mortgage~~**HOME** loans
23 constitutes a statutory conflict with the uniform operation
24 throughout the state of residential mortgage lending and is
25 preempted.

26 (3) Any charter, ordinance, resolution, regulation, rule, or
27 other action by a municipal corporation or other political

1 subdivision of this state to collect information about, require
2 reporting of, pledges regarding, notices, or certifications
3 concerning **HOME** loans, ~~lenders~~**CREDITORS**, applicants, deposits, or
4 credit experiences, character, and criminal background checks of
5 employees, agents, customers, or other persons is preempted by this
6 act.

7 (4) Any charter, ordinance, resolution, regulation, rule, or
8 other action by a municipal corporation or other political
9 subdivision of this state that attempts to regulate the brokering,
10 making, servicing, or collecting of ~~mortgage~~**HOME** loans constitutes
11 a statutory conflict and is preempted, including, without
12 limitation, if the ordinance, resolution, regulation, or other
13 action does either of the following:

14 (a) Disqualifies a person, or its subsidiaries or affiliates,
15 from doing business with the municipal corporation or other
16 political subdivision based upon the acts or practices of the
17 person or its subsidiaries or affiliates in brokering, making,
18 servicing, or collecting ~~mortgage~~**HOME** loans.

19 (b) Imposes reporting requirements or other obligations upon a
20 person, or its subsidiaries or affiliates, based upon the person's,
21 or its subsidiaries' or affiliates', acts or practices in
22 brokering, making, servicing, or collecting ~~mortgage~~**HOME** loans.

23 ~~—— (5) If any provision of this section, or any application of~~
24 ~~any provision of this section, is for any reason held to be illegal~~
25 ~~or invalid, the illegality or invalidity shall not affect any legal~~
26 ~~and valid provision or application of this section, and the~~
27 ~~provisions and applications of this section shall be severable.~~

1 Sec. 15. (1) The laws of this state relating to the brokering,
2 making, servicing, and collecting of ~~mortgage~~**HOME** loans prescribe
3 rules of conduct upon citizens generally, comprise a comprehensive
4 regulatory framework intended to operate uniformly throughout the
5 state under the same circumstances and conditions, and constitute
6 general laws of this state.

7 (2) Silence in the statutes of this state with respect to any
8 act or practice in the brokering, making, servicing, or collecting
9 of ~~mortgage~~**HOME** loans shall not be interpreted to mean that the
10 state has not completely occupied the field or has only set minimum
11 standards in its regulation of brokering, making, servicing, or
12 collecting of ~~mortgage~~**HOME** loans.

13 (3) It is the intent of the legislature to entirely preempt
14 municipal corporations and other political subdivisions from the
15 regulation and licensing of persons engaged in the brokering,
16 making, servicing, or collecting of ~~mortgage~~**HOME** loans in this
17 state.