

SUBSTITUTE FOR
HOUSE BILL NO. 5295

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, OR CREDIT UNEMPLOYMENT INSURANCE IN WHICH THE
5 CREDITOR IS NAMED AS A BENEFICIARY, ANY OTHER LIFE OR HEALTH
6 INSURANCE, OR ANY PAYMENTS DIRECTLY OR INDIRECTLY FOR ANY DEBT
7 CANCELLATION OR SUSPENSION AGREEMENT OR CONTRACT. HOWEVER,
8 INSURANCE PREMIUMS OR DEBT CANCELLATION OR SUSPENSION FEES
9 CALCULATED AND PAID IN EQUAL MONTHLY INSTALLMENTS ARE NOT
10 CONSIDERED FINANCED BY THE CREDITOR.
11 (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. AS USED IN THIS
4 SUBSECTION, "REASONABLE, TANGIBLE NET BENEFIT" INCLUDES, BUT IS NOT
5 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

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

12 (B) THERE IS A BENEFICIAL CHANGE FOR THE BORROWER IN THE NEW
13 LOAN, INCLUDING, BUT NOT LIMITED TO, A REDUCTION IN THE TERM OF THE
14 REFINANCED LOAN; THE NEW LOAN REFINANCES AN ADJUSTABLE RATE
15 MORTGAGE THAT IS APPROACHING THE INTEREST RATE RESET DATE; THE NEW
16 LOAN CONVERTS AN ADJUSTABLE RATE LOAN TO A FIXED RATE LOAN; THE NEW
17 LOAN CONVERTS A BALLOON LOAN TO A LOAN WITHOUT A BALLOON PAYMENT;
18 THE NEW LOAN EXTENDS THE TERM OF THE LOAN TO REDUCE THE AMOUNT OF
19 THE INSTALLMENT PAYMENTS; OR THE NEW LOAN CONVERTS A NON-FULLY
20 AMORTIZED LOAN TO A FULLY AMORTIZED LOAN THAT REQUIRES PRINCIPAL
21 REDUCTION WITH EACH PAYMENT. HOWEVER, A NEW LOAN DOES NOT HAVE A
22 REASONABLE, TANGIBLE NET BENEFIT UNDER THIS SUBDIVISION IF THE LOAN
23 IS REFINANCED INTO AN ADJUSTABLE RATE LOAN WITH A FIXED-RATE TERM
24 OF FEWER THAN 3 YEARS OR IF THE BORROWER WILL NOT RECOUP THE TOTAL
25 COST OF THE REFINANCING WITHIN 4 YEARS.

26 (C) THE LOAN IS TO PAY THE BALANCE OF A LAND CONTRACT;
27 REFINANCE A LEASE OPTION; OR REMOVE OR BUY OUT ANOTHER BORROWER

1 FROM A MORTGAGE OR FROM THE TITLE TO A MORTGAGED DWELLING, WITH A
2 COURT ORDER OR OTHER EVIDENCE THAT THE OTHER BORROWER NO LONGER
3 RESIDES IN THAT DWELLING.

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

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

14 (i) THE REFINANCE TRANSACTION WAS ORDERED BY A COURT OF
15 COMPETENT JURISDICTION.

16 (ii) THE PROPERTY SUBJECT TO THE MORTGAGE IS IN A FORECLOSURE
17 PROCEEDING.

18 (iii) THE REFINANCE TRANSACTION IS NECESSARY TO REFINANCE A
19 CONSTRUCTION LOAN INTO A PERMANENT LOAN.

20 (iv) THE BORROWER IS SUBJECT TO AN IMMINENT THREAT OF
21 BANKRUPTCY.

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

26 (vi) THE BORROWER OR A MEMBER OF THE IMMEDIATE FAMILY OF THE
27 BORROWER HAS A MEDICAL PROBLEM REQUIRING PROMPT MEDICAL SERVICES OR

1 PRESCRIPTION DRUGS.

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

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

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

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

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

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

26 (6) A CREDITOR SHALL NOT CHARGE A FEE FOR VERBALLY INFORMING A
27 PERSON OF THE BALANCE DUE TO PAY OFF A HOME LOAN. A CREDITOR SHALL

1 NOT CHARGE A PERSON A FEE FOR TRANSMITTING 1 WRITTEN STATEMENT OF
2 THE BALANCE DUE TO PAY OFF A HOME LOAN WITHIN A 12-MONTH PERIOD. A
3 CREDITOR MAY CHARGE A FEE THAT DOES NOT EXCEED \$25.00 TO PROVIDE A
4 SECOND WRITTEN STATEMENT OF THE BALANCE DUE TO PAY OFF A HOME LOAN
5 WITHIN A 12-MONTH PERIOD. IF A PERSON REQUESTS MORE THAN 2 WRITTEN
6 STATEMENTS OF THE BALANCE DUE TO PAY OFF A HOME LOAN WITHIN A 12-
7 MONTH PERIOD, A CREDITOR MAY CHARGE A REASONABLE FEE FOR ANY
8 ADDITIONAL WRITTEN STATEMENTS TRANSMITTED TO THAT PERSON.

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

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

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

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

22 (C) MATERIALLY MISCHARACTERIZE THE APPRAISAL VALUE OF A
23 DWELLING.

24 (D) IF UNABLE TO SUGGEST, OFFER, OR RECOMMEND TO A BORROWER A
25 REASONABLY ADVANTAGEOUS HOME LOAN, DISCOURAGE A BORROWER FROM
26 SEEKING A HOME LOAN FROM ANOTHER CREDITOR.

27 (9) SUBSECTION (8) DOES NOT PROHIBIT A CREDITOR FROM PROVIDING

1 A BORROWER WITH ACCURATE, UNBIASED, GENERAL INFORMATION ABOUT
2 CONSUMER HOME LOANS, UNDERWRITING STANDARDS, WAYS TO IMPROVE CREDIT
3 HISTORY, OR ANY OTHER MATTER RELEVANT TO A BORROWER.

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

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

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

18 (B) THE CREDITOR MAY USE ANY REASONABLE METHOD TO DETERMINE A
19 BORROWER'S ABILITY TO REPAY THE HOME LOAN, INCLUDING, BUT NOT
20 LIMITED TO, CONSIDERATION OF ANY OF THE FOLLOWING:

21 (i) THE BORROWER'S VERIFIED CURRENT AND EXPECTED INCOME,
22 CURRENT AND EXPECTED OBLIGATIONS, EMPLOYMENT STATUS OR TYPE OF
23 EMPLOYMENT, HISTORY OF EMPLOYMENT, CREDIT HISTORY, CREDIT SCORE,
24 RESIDUAL INCOME, OR DEBT-TO-INCOME RATIO.

25 (ii) THE AMOUNT OF THE MONTHLY PAYMENT FOR THE HOME LOAN,
26 INCLUDING PRINCIPAL, INTEREST, PROPERTY TAXES, AND HAZARD INSURANCE
27 PREMIUMS.

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

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

7 (i) THAT THE LOAN PROCEEDS ARE FULLY DISBURSED ON THE DATE OF
8 THE LOAN CLOSING.

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

12 (iii) THAT THE INTEREST RATE OVER THE ENTIRE TERM OF THE LOAN IS
13 A FIXED RATE EQUAL TO THE FULLY INDEXED INTEREST RATE AT THE TIME
14 OF THE LOAN CLOSING, WITHOUT CONSIDERING ANY INITIAL DISCOUNTED
15 RATE. AS USED IN THIS SUBPARAGRAPH, THE "FULLY INDEXED INTEREST
16 RATE AT THE TIME OF THE LOAN CLOSING" IS THE INTEREST RATE THAT
17 WOULD HAVE APPLIED AT THE TIME OF CLOSING IF THE INITIAL INTEREST
18 RATE BEEN DETERMINED BY THE APPLICATION OF THE SAME INTEREST RATE
19 FORMULA (FOR EXAMPLE, AN INTEREST RATE INDEX PLUS OR MINUS A
20 MARGIN) THAT APPLIES UNDER THE TERMS OF THE LOAN DOCUMENTS TO
21 SUBSEQUENT INTEREST RATE ADJUSTMENTS, DISREGARDING ANY LIMITATIONS
22 ON THE AMOUNT BY WHICH THE INTEREST RATE MAY CHANGE AT ANY 1 TIME.

23 (D) IF THE TERMS OF THE HOME LOAN PERMIT NEGATIVE
24 AMORTIZATION, THE REPAYMENT ANALYSIS SHALL BE BASED ON THE INITIAL
25 LOAN AMOUNT PLUS ANY BALANCE INCREASE THAT MAY ACCRUE FROM THE
26 NEGATIVE AMORTIZATION PROVISION.

27 (12) FOR PURPOSES OF SUBSECTION (11), THE USE OF AN AUTOMATED

House Bill No. 5295 (H-2) as amended June 18, 2008

1 UNDERWRITING SYSTEM THAT COMPLIES WITH THE PROVISIONS OF SUBSECTION
2 (11) TO UNDERWRITE, APPROVE, ACCEPT, OR OTHERWISE IDENTIFY A HOME
3 LOAN AS MEETING ACCEPTABLE CREDIT STANDARDS CONSTITUTES A
4 REASONABLE METHOD FOR DETERMINING A BORROWER'S ABILITY TO REPAY A
5 HOME LOAN.

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

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

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

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

[(C) CHARGE AN APPLICATION FEE.]

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

15 (2) ~~(3)~~ A person, appraiser, or real estate agent shall not
16 make, directly or indirectly, any false, deceptive, or misleading
17 statement or representation in connection with a mortgage HOME
18 loan, including, but not limited to, the borrower's ability to
19 qualify for a mortgage HOME loan or the value of the dwelling that
20 will secure repayment of the mortgage HOME loan.

21 (3) ~~(4)~~ A lender CREDITOR shall not insert or change
22 information on an application for a mortgage HOME loan if the
23 lender CREDITOR knows that the information is false and misleading
24 and intended to deceive a third party that the borrower is
25 qualified for the loan ~~when~~ IF in fact the third party would not
26 approve the loan without the insertion or change.

27 ~~— (5) A statement or representation is deceptive or misleading~~

~~if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider any of the following factors in deciding whether a statement or misrepresentation is deceptive or misleading.~~

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

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

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

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

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

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

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

(a) House Bill No. 5294.

(b) House Bill No. 5296.

(c) House Bill No. 5297.

- 1 (d) House Bill No. 5299.
- 2 (e) House Bill No. 5300.
- 3 (f) House Bill No. 5301.
- 4 (g) House Bill No. 5302.
- 5 (h) House Bill No. 5303.