

HOUSE BILL No. 5294

October 11, 2007, Introduced by Reps. Simpson, Tobocman, Sak, Angerer, Clack, Jackson, Miller, Accavitti, Byrnes, Melton, Young, Kathleen Law, Hopgood, Brown, Valentine, Hammel, Robert Jones, Mayes, Vagnozzi, Gonzales, 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 the title and sections 1 and 2 (MCL 445.1631 and
445.1632).

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

Sec. 1. This act shall be known and may be cited as the

~~"consumer mortgage"~~ **"HOME LOAN** protection act".

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

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

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

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

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

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

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

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

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

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

~~—— (c) "Home improvement installment contract" means an agreement of 1 or more documents covering the sale of goods or furnishing of~~

~~services to a buyer for improvements to the buyer's principal dwelling located in this state used for occupancy of 4 or fewer families under which the buyer promises to pay in installments all or any part of the price of the goods or services.~~

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

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

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

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

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

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

(H) "CONVENTIONAL PREPAYMENT PENALTY" MEANS A PREPAYMENT PENALTY OR FEE THAT IS COLLECTED OR CHARGED IN A HOME LOAN AND THAT IS AUTHORIZED BY LAW OTHER THAN THIS ACT, IF THE HOME LOAN DOES NOT HAVE AN ANNUAL PERCENTAGE RATE THAT EXCEEDS THE CONVENTIONAL MORTGAGE RATE BY MORE THAN 2 PERCENTAGE POINTS AND DOES NOT PERMIT ANY PREPAYMENT FEES OR PENALTIES THAT EXCEED 2% OF THE AMOUNT

1 PREPAID.

2 (I) "CREDITOR" MEANS A LENDER, AS THAT TERM IS DEFINED IN 24
3 CFR 3500.2, OR A MORTGAGE BROKER.

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

6 (i) AN AMOUNT THAT IS NOT MORE THAN 1% 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 EITHER BONA FIDE DISCOUNT POINTS OR A CONVENTIONAL
12 PREPAYMENT PENALTY.

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.

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

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

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

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

24 (M) "MORTGAGE BROKER" MEANS THAT TERM AS DEFINED IN 24 CFR
25 3500.2.

26 (N) "NONTRADITIONAL MORTGAGE" MEANS THAT TERM AS DESCRIBED IN
27 THE INTERAGENCY GUIDANCE ON NONTRADITIONAL MORTGAGE PRODUCT RISKS,

1 71 FR, P 58,609 (OCT. 4, 2006).

2 (O) ~~(e)~~ "Person" means an individual, corporation, **LIMITED**
3 **LIABILITY COMPANY**, partnership, association, governmental entity,
4 or any other legal entity.

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

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

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

13 ~~—— (g) "Regulated lender" means a depository institution or a~~
14 ~~licensee or a registrant under the consumer financial services act,~~
15 ~~1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to~~
16 ~~493.114, the secondary mortgage loan act, 1981 PA 125, MCL 493.51~~
17 ~~to 493.81, or the mortgage brokers, lenders, and servicers~~
18 ~~licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and a seller~~
19 ~~under the home improvement finance act, 1965 PA 332, MCL 445.1101~~
20 ~~to 445.1431.~~

21 ~~—— (h) "State and federal laws" means, individually and~~
22 ~~collectively, 1 or more of the laws or regulations of this state or~~
23 ~~the federal government which regulate or are applicable to a~~
24 ~~mortgage loan or a person when brokering, making, servicing, or~~
25 ~~collecting a mortgage loan, including, without limitation, the~~
26 ~~federal truth in lending act, title I of the consumer credit~~
27 ~~protection act, Public Law 90 321, 15 U.S.C. 1601 to 1608, 1610 to~~

~~1613, 1615, 1631 to 1635, 1637 to 1649, and 1661 to 1667f, real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724, equal credit opportunity act, title VII of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1691 to 1691f, fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, 82 Stat. 81, fair credit report act, title VI of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1681 to 1681v, the homeowners protection act of 1998, Public Law 105-216, 112 Stat. 897, the fair debt collection practices act, title VIII of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601nt and 1692 to 1692o, consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601 to 445.1614, and home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1422.~~

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

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

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

(iii) ALL COMPENSATION PAID DIRECTLY OR INDIRECTLY TO A MORTGAGE BROKER FROM ANY SOURCE, INCLUDING A MORTGAGE BROKER THAT ORIGINATES A LOAN IN ITS OWN NAME IN A TABLE-FUNDED TRANSACTION.

(iv) THE COST OF ALL PREMIUMS DIRECTLY OR INDIRECTLY FINANCED

1 BY THE CREDITOR FOR ANY CREDIT LIFE, CREDIT DISABILITY, CREDIT
2 UNEMPLOYMENT, OR CREDIT PROPERTY INSURANCE, OR ANY OTHER LIFE OR
3 HEALTH INSURANCE, OR ANY PAYMENTS DIRECTLY OR INDIRECTLY FINANCED
4 BY THE CREDITOR FOR ANY DEBT CANCELLATION OR SUSPENSION AGREEMENT
5 OR CONTRACT. HOWEVER, INSURANCE PREMIUMS PAID ON A MONTHLY BASIS OR
6 DEBT CANCELLATION OR SUSPENSION FEES CALCULATED AND PAID ON A
7 MONTHLY BASIS ARE NOT CONSIDERED FINANCED BY THE CREDITOR.

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

10 (vi) ALL PREPAYMENT FEES OR PENALTIES THAT ARE INCURRED BY THE
11 BORROWER IF THE LOAN REFINANCES A PREVIOUS LOAN ORIGINATED OR
12 CURRENTLY HELD BY THE SAME CREDITOR OR AN AFFILIATE OF THE
13 CREDITOR.

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

20 (Q) "RATE SPREAD HOME LOAN" MEANS A LOAN THAT MEETS EITHER OF
21 THE FOLLOWING:

22 (i) IS A LOAN DESCRIBED IN AND FOR WHICH THE RATE SPREAD MUST
23 BE REPORTED UNDER 12 CFR 203.4 (A) (12) .

24 (ii) IS A HIGH-COST HOME LOAN.

25 (R) "RATE THRESHOLD" MEANS AN ANNUAL PERCENTAGE RATE THAT
26 EQUALS OR EXCEEDS THE RATE CALCULATED UNDER 12 CFR 226.32 (A) (1) (i) ,
27 WHETHER THE HOME LOAN IS A "RESIDENTIAL MORTGAGE TRANSACTION" OR AN

1 EXTENSION OF "OPEN-END CREDIT" AS THOSE TERMS ARE DEFINED IN 12 CFR
2 226.2.

3 (S) "THRESHOLD" MEANS A RATE THRESHOLD OR A TOTAL POINTS AND
4 FEES THRESHOLD.

5 (T) "TOTAL LOAN AMOUNT" MEANS THE PRINCIPAL OF THE LOAN MINUS
6 THOSE POINTS AND FEES DESCRIBED IN SUBDIVISION (i) THAT ARE INCLUDED
7 IN THE PRINCIPAL AMOUNT OF THE LOAN. FOR AN OPEN-END LOAN, THE
8 TOTAL LOAN AMOUNT IS CALCULATED USING THE TOTAL LINE OF CREDIT
9 ALLOWED UNDER THE HOME LOAN AT CLOSING.

10 (U) "TOTAL POINTS AND FEES THRESHOLD" MEANS 1 OF THE
11 FOLLOWING, AS APPLICABLE:

12 (i) FOR A HOME LOAN IN WHICH THE TOTAL LOAN AMOUNT IS
13 \$20,000.00 OR MORE, THE TOTAL POINTS AND FEES PAYABLE IN CONNECTION
14 WITH THE HOME LOAN AFTER SUBTRACTING ANY EXCLUDED POINTS AND FEES
15 EXCEED 5% OF THE TOTAL LOAN AMOUNT.

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

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

21 (A) TAXES, FILING FEES, RECORDING FEES, OR OTHER CHARGES OR
22 FEES PAID TO OR REQUIRED BY A PUBLIC OFFICIAL FOR DETERMINING THE
23 EXISTENCE OF OR FOR PERFECTING, RELEASING, OR SATISFYING A SECURITY
24 INTEREST.

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

1 (i) TAX PAYMENT SERVICES.

2 (ii) FLOOD CERTIFICATION.

3 (iii) PEST INFESTATION OR FLOOD DETERMINATION.

4 (iv) APPRAISAL.

5 (v) INSPECTIONS PERFORMED BEFORE THE CLOSING.

6 (vi) CREDIT REPORTS.

7 (vii) SURVEYS.

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

10 (ix) NOTARY FEES.

11 (x) ESCROW CHARGES IN ADDITION TO ANY PAID UNDER SUBDIVISION
12 (A).

13 (xi) TITLE INSURANCE PREMIUMS.

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

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

19 (a) Senate Bill No.____ or House Bill No. 5295(request no.
20 04909'07 *).

21 (b) Senate Bill No.____ or House Bill No. 5296(request no.
22 04910'07 *).

23 (c) Senate Bill No.____ or House Bill No. 5297(request no.
24 04911'07 *).

25 (d) Senate Bill No.____ or House Bill No. 5298(request no.
26 04912'07 *).

27 (e) Senate Bill No.____ or House Bill No. 5299(request no.

1 04913'07 *).

2 (f) Senate Bill No.____ or House Bill No. 5300(request no.
3 05435'07).

4 (g) Senate Bill No.____ or House Bill No. 5301(request no.
5 05436'07).

6 (h) Senate Bill No.____ or House Bill No. 5302(request no.
7 05437'07).

8 (i) Senate Bill No.____ or House Bill No. 5303(request no.
9 05438'07).