

HOUSE BILL No. 4592

March 17, 2009, Introduced by Reps. Simpson, Slavens, Liss and Barnett 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:

1 TITLE
2 An act to prohibit certain lending practices; to require
3 disclosure of certain information for home loans **AND HIGH-COST HOME**
4 **LOANS**; to prescribe certain duties and obligations of the lender in
5 a home loan **OR HIGH-COST HOME LOAN** transaction; to prescribe the
6 powers and duties of certain state agencies and officials; and to
7 prescribe penalties and provide for remedies.

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

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

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

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

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

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

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

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

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

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

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

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

(I) "DEPOSITORY FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY CHARTERED BANK, A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT UNION, OR AN ENTITY

1 OF THE FEDERALLY CHARTERED FARM CREDIT SYSTEM.

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

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

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

10 (iii) GOVERNMENT FEES.

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

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

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

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

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

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

25 (N) "MARGIN" MEANS THE NUMBER OF PERCENTAGE POINTS A CREDITOR
26 ADDS TO AN INDEX TO CALCULATE THE INTEREST RATE AT EACH ADJUSTMENT
27 PERIOD, AS SET FORTH IN THE LOAN AGREEMENT

1 (O) "MORTGAGE BROKER" MEANS THAT TERM AS DEFINED IN 24 CFR
2 3500.2.

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

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

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

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

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

22 ~~—— (h) "State and federal laws" means, individually and~~
23 ~~collectively, 1 or more of the laws or regulations of this state or~~
24 ~~the federal government which regulate or are applicable to a~~
25 ~~mortgage loan or a person when brokering, making, servicing, or~~
26 ~~collecting a mortgage loan, including, without limitation, the~~
27 ~~federal truth in lending act, title I of the consumer credit~~

~~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.~~

(Q) 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 OR IN A TABLE-FUNDED TRANSACTION.

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

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

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

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

22 (R) "RATE THRESHOLD" MEANS AN ANNUAL PERCENTAGE RATE THAT
23 EQUALS OR EXCEEDS THE RATE CALCULATED UNDER 12 CFR 226.32 (A) (1) (i) ,
24 WHETHER THE HOME LOAN IS A "RESIDENTIAL MORTGAGE TRANSACTION" OR AN
25 EXTENSION OF "OPEN-END CREDIT" AS THOSE TERMS ARE DEFINED IN 12 CFR
26 226.2.

27 (S) "TABLE-FUNDED TRANSACTION" MEANS A LOAN TRANSACTION CLOSED

1 BY A MORTGAGE BROKER IN THE MORTGAGE BROKER'S OWN NAME WITH FUNDS
2 ADVANCED BY A PERSON OTHER THAN THE MORTGAGE BROKER IN WHICH THE
3 LOAN IS ASSIGNED CONTEMPORANEOUSLY OR WITHIN 1 BUSINESS DAY OF THE
4 FUNDING OF THE LOAN TO THE PERSON THAT ADVANCES THE FUNDS.

5 (T) "THRESHOLD" MEANS A RATE THRESHOLD OR A TOTAL POINTS AND
6 FEES THRESHOLD.

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

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

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

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

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

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

27 (B) BONA FIDE AND REASONABLE FEES PAID TO A PERSON OTHER THAN

1 A CREDITOR OR AN AFFILIATE OF THE CREDITOR FOR ANY OF THE
2 FOLLOWING:

- 3 (i) TAX PAYMENT SERVICES.
- 4 (ii) FLOOD CERTIFICATION.
- 5 (iii) PEST INFESTATION OR FLOOD DETERMINATION.
- 6 (iv) APPRAISAL.
- 7 (v) INSPECTIONS PERFORMED BEFORE THE CLOSING.
- 8 (vi) CREDIT REPORTS.
- 9 (vii) SURVEYS.
- 10 (viii) ATTORNEY FEES, IF THE BORROWER HAS THE RIGHT TO SELECT
11 THE ATTORNEY FROM AN APPROVED LIST OR OTHERWISE.
- 12 (ix) NOTARY FEES.
- 13 (x) ESCROW CHARGES IN ADDITION TO ANY PAID UNDER SUBDIVISION
14 (A) .
- 15 (xi) TITLE INSURANCE PREMIUMS.
- 16 (xii) FIRE AND HAZARD INSURANCE AND FLOOD INSURANCE PREMIUMS,
17 IF THE CONDITIONS IN 12 CFR 226.4(D)(2) ARE MET.
- 18 (xiii) FEES FOR PREPARING LOAN DOCUMENTS, INCLUDING, BUT NOT
19 LIMITED TO, DEEDS, MORTGAGES, AND SETTLEMENT DOCUMENTS.
- 20 (3) THIS ACT DOES NOT APPLY TO A DEPOSITORY FINANCIAL
21 INSTITUTION OR AN OPERATING SUBSIDIARY OF A DEPOSITORY FINANCIAL
22 INSTITUTION.

23 Enacting section 1. This amendatory act does not take effect
24 unless all of the following bills of the 95th Legislature are
25 enacted into law:

- 26 (a) Senate Bill No. _____ or House Bill No. 4587(request no.
27 1099'09) .

1 (b) Senate Bill No.____ or House Bill No. 4585(request no.
2 01100'09).

3 (c) Senate Bill No.____ or House Bill No. 4586(request no.
4 01101'09).

5 (d) Senate Bill No.____ or House Bill No. 4593(request no.
6 01103'09).

7 (e) Senate Bill No.____ or House Bill No. 4590(request no.
8 01104'09).

9 (f) Senate Bill No.____ or House Bill No. 4589(request no.
10 01105'09).

11 (g) Senate Bill No.____ or House Bill No. 4591(request no.
12 01106'09).

13 (h) Senate Bill No.____ or House Bill No. 4588(request no.
14 01107'09).