

# SENATE BILL No. 708

October 16, 2001, Introduced by Senator GARCIA and referred to the Committee on Banking and Financial Institutions.

A bill to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; and to prescribe penalties and provide for remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "Michigan predatory lending practices act".

3       Sec. 2. 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 the annual percentage  
7 rate for the loan calculated according to the federal truth in  
8 lending act.

1 (c) "Federal truth in lending act" means the truth in  
2 lending act, title I of the consumer credit protection act,  
3 Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615,  
4 1631 to 1635, 1637 to 1649, and 1661 to 1667f.

5 (d) "High-cost home loan" means a home loan in which the  
6 terms of the loan meet 1 of the following:

7 (i) The annual percentage rate of the home loan exceeds by  
8 6.5 or more percentage points the weekly average yield on United  
9 States treasury securities adjusted to a constant maturity of 5  
10 years as of the week immediately preceding the week in which the  
11 interest rate for the loan is established.

12 (ii) The total points and fees on the loan exceed 4% of the  
13 total loan amount.

14 (e) "Home loan" means a loan, other than a reverse mortgage  
15 transaction, where all of the following apply:

16 (i) The principal amount of the loan does not exceed the  
17 conforming loan size limit for a single-family dwelling as estab-  
18 lished from time to time by the federal national mortgage  
19 association.

20 (ii) The borrower is a natural person.

21 (iii) The debt is incurred by the borrower primarily for  
22 personal, family, or household purposes.

23 (iv) The loan is secured by a mortgage or similar instrument  
24 on real estate upon which there is located or there is to be  
25 located a structure or structures designed principally for occu-  
26 pancy of from 1 to 4 families and which is or will be occupied by  
27 the borrower as the borrower's principal dwelling.

1 (f) "Introductory rate" means an annual percentage rate of  
2 interest which is less than the annual percentage rate of inter-  
3 est which will apply to the loan after the end of an initial or  
4 introductory period.

5 (g) "Lender" means any entity which originated more than 5  
6 home loans within the past 12-month period or acted as an inter-  
7 mediary between originators and borrowers on more than 5 home  
8 loans within the past 12-month period.

9 (h) "Obligor" means a borrower, coborrower, cosigner, or  
10 guarantor obligated to repay a home loan.

11 (i) "Points and fees" includes all of the following:

12 (i) All items required to be disclosed under the federal  
13 truth in lending act, except interest or the time-price  
14 differential.

15 (ii) All charges for items listed under the federal truth in  
16 lending act, but only if the lender receives direct or indirect  
17 compensation in connection with the charge or the charge is paid  
18 to an affiliate of the lender.

19 (iii) All compensation paid directly or indirectly to a  
20 mortgage broker.

21 (j) "Points and fees" shall not include either of the  
22 following:

23 (i) Taxes, filing fees, recording, and other charges and  
24 fees paid for determining the existence of or for perfecting,  
25 releasing, or satisfying a security interest.

26 (ii) Fees paid to a person other than a lender or an  
27 affiliate of the lender or to the mortgage broker or an affiliate

1 of the mortgage broker for flood certification, pest infestation  
2 and flood determinations, appraisal inspections performed before  
3 closing, credit reports, surveys, attorney fees, notary fees,  
4 escrow charges, title insurance premiums, and fire and flood  
5 insurance premiums.

6       Sec. 3. (1) A home loan shall not contain a prepayment pen-  
7 alty of more than 3% in the first year, 2% in the second year, 1%  
8 in the third year, or any prepayment penalty beyond the third  
9 year.

10       (2) A home loan shall not contain a prepayment penalty which  
11 extends for a longer period than any initial or introductory  
12 interest rate of the loan.

13       (3) The refinancing of a home loan shall not contain a pre-  
14 payment penalty when the lender on the refinancing is the same  
15 as, or an affiliate of, the lender on the loan being refinanced.

16       (4) A lender shall not recommend or encourage nonpayment on  
17 an existing loan or other debt before or in connection with the  
18 closing of a home loan that refinances all or any portion of the  
19 existing loan or debt.

20       (5) A lender shall not charge a fee for a product or service  
21 where the product or service is not actually provided, or misrep-  
22 resent the amount charged by or paid to a third party for a pro-  
23 duct or service.

24       (6) A lender, appraiser, or real estate agent shall not make  
25 or cause to be made, directly or indirectly, any false, decep-  
26 tive, or misleading statement or representation in connection  
27 with a home loan including, without limitation, a false,

1 deceptive, or misleading statement or representation regarding  
2 the borrower's ability to qualify for any mortgage product, or  
3 regarding the value of the dwelling.

4 (7) A statement or representation is deceptive or misleading  
5 if it has the capacity to deceive or mislead a borrower or poten-  
6 tial borrower. The commissioner shall consider the following  
7 factors in deciding whether a statement or representation is  
8 deceptive or misleading:

9 (a) The overall impression that the statement or representa-  
10 tion reasonably creates.

11 (b) The particular type of audience to which the statement  
12 is directed.

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

15 (8) A lender shall not directly or indirectly compensate,  
16 coerce, or intimidate an appraiser for the purpose of influencing  
17 the independent judgment of the appraiser with respect to the  
18 value of real estate covered by a home loan or is being offered  
19 as security according to an application for a home loan.

20 (9) A lender shall not require or allow either of the  
21 following:

22 (a) The advance collection of a premium, on a single premium  
23 basis, for any credit life, credit disability, credit unemploy-  
24 ment, or credit property insurance, and any analogous product.

25 (b) The advance collection of a fee for any debt cancella-  
26 tion or suspension agreement or contract, in connection with any

1 home loan, whether the premium or fee is paid directly by the  
2 borrower or is financed by the borrower through the loan.

3 (10) A home loan document in which blanks are left to be  
4 filled in after the contract is signed by the borrower is not  
5 enforceable under the law.

6 (11) If the discussions between the lender and the borrower  
7 on a home loan are conducted primarily in a language other than  
8 English, the lender shall, before closing, provide an additional  
9 copy of all information required to be disclosed to the borrower  
10 under the federal truth in lending act, translated into the lan-  
11 guage in which the discussions were conducted.

12 Sec. 4. A high-cost home loan is subject to the require-  
13 ments of section 3.

14 Sec. 5. (1) A high-cost home loan shall not include any  
15 prepayment fees or penalties.

16 (2) A high-cost home loan shall not contain a scheduled pay-  
17 ment that is more than twice as large as the average of earlier  
18 scheduled payments. This subsection does not apply when the pay-  
19 ment schedule is adjusted to the seasonal or irregular income of  
20 the borrower.

21 (3) A high-cost home loan shall not include terms under  
22 which more than 2 periodic payments required under the loan are  
23 consolidated and paid in advance from the loan proceeds provided  
24 to the borrower.

25 (4) A lender shall not finance, directly or indirectly, any  
26 points, fees, or other charges required to be paid by the  
27 borrower in connection with a high-cost home loan if the loan is

1 being entered into to refinance an existing high-cost home loan  
2 if the lender, or any affiliate of the lender, is also the lender  
3 with respect to the existing loan.

4       (5) A lender shall not knowingly refinance an existing home  
5 loan with a high-cost home loan when the new loan does not have a  
6 reasonable, tangible net benefit to the borrower including, but  
7 not limited to, the terms of the new loan, the cost of the new  
8 loan, and the borrower's circumstances.

9       (6) A lender shall not make a home loan unless the lender  
10 reasonably believes that 1 or more of the borrowers, when consid-  
11 ered individually or collectively, will be able to make the  
12 scheduled payments to repay the obligation based upon a consider-  
13 ation of their current and expected income, current obligations,  
14 employment status, and other financial resources. A borrower is  
15 presumed to be able to make the scheduled payments to repay the  
16 obligation if the borrower's total monthly debts, including  
17 amounts owed under the loan, do not exceed 50% of the borrower's  
18 monthly gross income as verified by the credit application, the  
19 borrower's financial statement, a credit report, financial infor-  
20 mation provided to the lender by or on behalf of the borrower, or  
21 any other reasonable means. A presumption of inability to make  
22 the scheduled payments to repay the obligation does not arise  
23 solely from the fact that the borrower's total monthly debts  
24 exceed 50% of the borrower's monthly gross income.

25       (7) A lender shall not, in connection with a high-cost home  
26 loan, finance points and fees equivalent to more than 3% of the  
27 loan amount or \$600, whichever is less.

1       (8) A high-cost home loan shall not contain a provision that  
2 permits the lender, in its sole discretion, to accelerate the  
3 indebtedness. This subsection does not apply when repayment of  
4 the loan has been accelerated by default, under a due-on-sale  
5 clause.

6       (9) A lender shall not charge a borrower any fees or other  
7 charges to modify, renew, extend, or amend a high-cost home loan  
8 or to defer any payment due under the terms of a high-cost home  
9 loan.

10       (10) A high-cost home loan shall not be subject to a manda-  
11 tory arbitration clause that limits in any way the right of the  
12 borrower to seek relief through the judicial process.

13       (11) A lender shall not pay a contractor under a home  
14 improvement contract from the proceeds of a high-cost home loan  
15 other than by an instrument payable to the borrower, or at the  
16 election of the borrower, through a third party escrow agent in  
17 accordance with terms established in a written agreement signed  
18 by the borrower, the lender, and the contractor before the  
19 disbursement.

20       (12) A high-cost home loan shall not contain a payment  
21 schedule with regular periodic payments that result in an  
22 increase in the principal balance, otherwise known as negative  
23 amortization.

24       (13) A high-cost home loan shall not contain a provision  
25 that increases the interest rate after default. This subsection  
26 does not apply to interest rate changes in a variable rate loan  
27 otherwise consistent with the provisions of the loan documents,



1 provided the change in the interest rate is not triggered by the  
2 event of default or the acceleration of the indebtedness.

3       Sec. 6. (1) A lender of a high-cost home loan shall provide  
4 the borrower, at least 3 days before closing, clear written and  
5 oral disclosure of all of the following information:

6       (a) Whether the loan contains a prepayment penalty and, if  
7 so, how much it is and for how long it extends, including clear  
8 notification that the prepayment penalty must be paid if a bor-  
9 rower refinances with another lender.

10       (b) The amount of the borrower's monthly payments.

11       (c) Whether the loan has a variable rate feature and, if so,  
12 how the variable rate might affect future monthly payments,  
13 including specific notification of what the fully indexed inter-  
14 est rate of the loan would be at the present rate of the index.

15       (d) Loan fees being paid by the borrower.

16       (e) Information regarding any payments being made to third  
17 party creditors from the loan proceeds.

18       (2) A lender of a high-cost home loan shall provide the bor-  
19 rower, at least 3 days before closing, clear written and oral  
20 disclosure regarding the value of receiving housing counseling  
21 before taking out a home loan and a list of the nearest available  
22 HUD-approved housing counseling agencies.

23       (3) A lender shall not sell or otherwise assign a high-cost  
24 home loan without furnishing the following statement to the pur-  
25 chaser or assignee:

26       "NOTICE: THIS IS A HOME LOAN SUBJECT TO SPECIAL RULES AND  
27 CONDITIONS AS REQUIRED BY LAW. PURCHASERS OR ASSIGNEES OF

1       THIS LOAN COULD BE LIABLE FOR ALL CLAIMS AND DEFENSES WITH  
2       RESPECT TO THE MORTGAGE THAT THE BORROWER COULD ASSERT  
3       AGAINST THE CREDITOR.".

4       Sec. 7. (1) A lender in a high-cost home loan who, when  
5 acting in good faith, fails to comply with section 5 will not be  
6 considered to have violated this act if the lender establishes  
7 either of the following:

8       (a) Within 30 days of the loan closing and before the insti-  
9 tution of any action under this section, the borrower is notified  
10 of the compliance failure, appropriate restitution is made, and 1  
11 of the following adjustments is made to the loan at the choice of  
12 the borrower:

13       (i) Make the high-cost home loan satisfy the requirements of  
14 section 5.

15       (ii) Change the terms of the loan in a manner beneficial to  
16 the borrower so that the loan will no longer be considered a  
17 high-cost home loan subject to this act.

18       (b) The compliance failure was not intentional and resulted  
19 from a bona fide error notwithstanding the maintenance of proce-  
20 dures reasonably adapted to avoid such errors, and within 60 days  
21 after the discovery of the compliance failure and before the  
22 institution of any action under this act or the receipt of writ-  
23 ten notice of the compliance failure, the borrower is notified of  
24 the compliance failure, appropriate restitution is made, and 1 of  
25 the following adjustments is made to the loan at the choice of  
26 the borrower:

1       (i) Make the high-cost home loan satisfy the requirements of  
2 section 5.

3       (ii) Change the terms of the loan in a manner beneficial to  
4 the borrower so that the loan will no longer be considered a  
5 high-cost home loan subject to this act.

6       (2) Examples of a bona fide error under this section include  
7 clerical, calculation, computer malfunction and programming, and  
8 printing errors. An error of legal judgment with respect to a  
9 person's obligations under this section is not a bona fide  
10 error.

11       Sec. 8. In addition to any other penalties or remedies pro-  
12 vided by law, a person that violates this act is guilty of a mis-  
13 demeanor punishable by imprisonment for not more than 1 year or a  
14 fine of not more than \$10,000.00, or both.