

Legislative Analysis



HOME FORECLOSURE PREVENTION ACT

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House Bill 6614

Sponsor: Rep. Steve Tobocman

House Bill 6615

Sponsor: Rep. Bert Johnson

Committee: Banking and Financial Services

Complete to 11-10-08

A SUMMARY OF HOUSE BILLS 6614 AND 6615 AS INTRODUCED 11-6-08

House Bill 6615 would create the Home Foreclosure Prevention Act, and House Bill 6614 would amend the Revised Judicature Act to allow a court to dismiss or delay a foreclosure action under certain circumstances. Under the Revised Judicature Act, foreclosure can be through a judicial foreclosure action filed in circuit court or by publishing a notice of foreclosure by advertisement. The bills are tie-barred to each other and are discussed in more detail below.

House Bill 6615 would create the Home Foreclosure Prevention Act to provide, in the case of a mortgage on a primary residence that secures a subprime loan, the following:

- Require the commissioner of the Office of Financial and Insurance Regulation (OFIR) to establish the Michigan Home Foreclosure Prevention Program to seek solutions to avoid foreclosures for certain subprime loans. The program may provide for the mediation of foreclosure proceedings.
- Require a mortgage servicer to inform the borrower by mail – at least 45 days before filing a judicial foreclosure action or publishing a notice of foreclosure by advertisement – of the availability of resources to avoid foreclosure and list the information required on the notice.
- Require the mortgage servicer – within three business days of mailing the above notice – to file information containing the name and address of the borrower with the State Court Administrative Office (SCAO).
- Require the SCAO, by January 1, 2009, to establish an internal, non-public database to track information required by the bill.
- Allow the commissioner to determine whether a subprime loan was appropriate for efforts to avoid foreclosure based on criteria specified in the bill. If so, the commissioner could (1) extend the earliest date to begin foreclosure proceedings for up to 90 days, and/or (2) order the mortgage servicer and the borrower to participate in mediation.

- Until such time as the Michigan Home Foreclosure Prevention Program was discontinued, require that a complaint to judicially foreclose a mortgage on a home mortgage that secures a subprime loan published after December 14, 2008 contain a certification that notice and information was provided as required above and that the filing or publication date was on or after the earliest date to begin a proceeding or as extended by the commissioner.
- Allow a court to dismiss an action of foreclosure without prejudice and order the plaintiff to pay the costs incurred by the defendant if the certification in a complaint contained a materially inaccurate statement.
- Prohibit the sale of a foreclosed property if a certification in a notice of foreclosure by advertisement contained a materially inaccurate statement until such time as the party attempting to foreclose by advertisement has complied with the bill.

House Bill 5614 would amend the Revised Judicature Act (MCL 600.3101, 600.3208, and 600.3216) and would apply to foreclosure proceedings filed after December 14, 2008 and until the discontinuation of the Michigan Home Foreclosure Prevention Program.

For those proceedings in which the program would require submission of a certification, the bill would require a plaintiff to include the certification in the complaint. If the plaintiff failed to do so, or if the certification contained a materially inaccurate statement, the court could dismiss the action without prejudice and order the plaintiff to pay the costs incurred by the defendant in defending the foreclosure proceeding.

The bill would also require the person publishing a notice of a sale of the mortgaged premises to include the certification in the notice. If the notice of foreclosure sale failed to include the certification, or if the certification contained a materially inaccurate statement, the person making the sale could not conduct the sale until the party attempting to foreclose by advertisement had complied with the Home Foreclosure Prevention Act.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the Department of Labor and Economic Growth, Office of Financial and Insurance Regulation, and the State Court Administrative Office relative to the development of the database of impending foreclosures. The Office of Financial and Insurance Regulation would incur additional and, at this time, indeterminate costs to carry out the foreclosure prevention program. The office's costs would depend, in part, on the scope of its activities in carrying out the program.

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