

HOUSE BILL No. 4589

March 17, 2009, Introduced by Reps. Valentine, 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 sections 10 and 11 (MCL 445.1640 and 445.1641).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) The attorney general or the prosecuting attorney
2 for the county where an alleged violation occurred may bring an
3 action against a person to do 1 or more of the following:

4 (a) Obtain a declaratory judgment that a method, act, or
5 practice of the person is a violation of this act.

6 (b) Enjoin a person who is engaging or about to engage in a
7 method, act, or practice that is a violation of this act.

8 (c) Obtain a civil fine ~~of not more than \$10,000.00 for the~~
9 ~~first offense and not more than \$20,000.00 for the second and any~~

1 ~~subsequent offense~~ UNDER SUBSECTION (2).

2 (2) IN ADDITION TO ANY OTHER REMEDIES OR PENALTIES IMPOSED BY
3 THIS ACT, A CREDITOR, A MEMBER, OFFICER, DIRECTOR, OR EMPLOYEE OF A
4 CREDITOR, OR ANY OTHER PERSON THAT VIOLATES THIS ACT OR AN ORDER
5 MADE OR RULE PROMULGATED UNDER THIS ACT, OR DIRECTLY OR INDIRECTLY
6 COUNSELS, AIDS, OR ABETS IN A VIOLATION, IS RESPONSIBLE FOR A CIVIL
7 FINE OF NOT MORE THAN \$3,000.00 FOR EACH VIOLATION, EXCEPT THAT A
8 PERSON SHALL NOT BE FINED MORE THAN \$30,000.00 FOR A TRANSACTION
9 RESULTING IN MORE THAN 1 VIOLATION, PLUS THE COSTS OF
10 INVESTIGATION.

11 Sec. 11. ~~(1) A person is not liable for a violation under~~
12 ~~section 10 if the person shows that the violation was an~~
13 ~~unintentional and bona fide error notwithstanding the maintenance~~
14 ~~of procedures reasonably adopted to avoid the error. Examples of a~~
15 ~~bona fide error include clerical, calculation, computer~~
16 ~~malfunction, programming, or printing errors. An error in legal~~
17 ~~judgment with respect to a person's obligations under this act is~~
18 ~~not a bona fide error.~~

19 ~~—— (2) A person is not liable for a violation under section 10~~
20 ~~if, within 60 days after discovery of the violation and before the~~
21 ~~institution of an action under section 10, the person notifies the~~
22 ~~borrower or buyer of the violation and corrects the violation in a~~
23 ~~manner that, to the extent it is reasonably possible to do so,~~
24 ~~restores the borrower or buyer to the position in which the~~
25 ~~borrower or buyer would have been if the violation had not~~
26 ~~occurred.~~

27 ~~—— (3) The person alleged to have violated this act has the~~

1 ~~burden of proving that he or she is not liable as provided under~~
2 ~~this section. A CREDITOR, A MEMBER, OFFICER, DIRECTOR, OR EMPLOYEE~~
3 ~~OF A CREDITOR, OR ANY OTHER PERSON THAT KNOWINGLY VIOLATES THIS ACT~~
4 ~~OR AN ORDER MADE OR RULE PROMULGATED UNDER THIS ACT IS GUILTY OF A~~
5 ~~MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$15,000.00,~~
6 ~~IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH.~~

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

10 (a) Senate Bill No. ____ or House Bill No. 4592 (request no.
11 01098'09).

12 (b) Senate Bill No. ____ or House Bill No. 4587 (request no.
13 01099'09).

14 (c) Senate Bill No. ____ or House Bill No. 4585 (request no.
15 01100'09).

16 (d) Senate Bill No. ____ or House Bill No. 4586 (request no.
17 01101'09).

18 (e) Senate Bill No. ____ or House Bill No. 4593 (request no.
19 01103'09).

20 (f) Senate Bill No. ____ or House Bill No. 4590 (request no.
21 01104'09).

22 (g) Senate Bill No. ____ or House Bill No. 4591 (request no.
23 01106'09).

24 (h) Senate Bill No. ____ or House Bill No. 4588 (request no.
25 01107'09).