

HOUSE BILL No. 4593

March 17, 2009, Introduced by Reps. Corriveau, 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,"
(MCL 445.1631 to 445.1645) by adding sections 7a and 7b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7A. (1) ANY PERSON WHO PURCHASES OR IS OTHERWISE ASSIGNED
2 A HIGH-COST HOME LOAN IS SUBJECT TO ALL AFFIRMATIVE CLAIMS AND ANY
3 DEFENSES WITH RESPECT TO THE LOAN THAT THE BORROWER COULD ASSERT
4 AGAINST THE ORIGINAL CREDITOR OF THE LOAN. HOWEVER, THIS SUBSECTION
5 DOES NOT APPLY IF THE PURCHASER OR ASSIGNEE DEMONSTRATES BY A
6 PREPONDERANCE OF THE EVIDENCE THAT IT MEETS ALL OF THE FOLLOWING:

7 (A) AT THE TIME OF THE PURCHASE OR ASSIGNMENT OF THE SUBJECT
8 LOANS, HAS IN PLACE POLICIES THAT EXPRESSLY PROHIBIT ITS PURCHASE
9 OR ACCEPTANCE OF ASSIGNMENT OF ANY HIGH-COST HOME LOANS.

1 (B) REQUIRES BY CONTRACT THAT A SELLER OR ASSIGNOR OF HOME
2 LOANS TO THE PURCHASER OR ASSIGNEE REPRESENTS AND WARRANTS 1 OF THE
3 FOLLOWING TO THE PURCHASER OR ASSIGNEE:

4 (i) THAT THE SELLER OR ASSIGNOR WILL NOT SELL OR ASSIGN ANY
5 HIGH-COST HOME LOANS TO THE PURCHASER OR ASSIGNEE.

6 (ii) THAT THE SELLER OR ASSIGNOR IS A BENEFICIARY OF A
7 REPRESENTATION AND WARRANTY FROM A PREVIOUS SELLER OR ASSIGNOR TO
8 THAT EFFECT.

9 (C) EXERCISES REASONABLE DUE DILIGENCE AT THE TIME OF PURCHASE
10 OR ASSIGNMENT OF HOME LOANS OR WITHIN A REASONABLE PERIOD OF TIME
11 AFTER THE PURCHASE OR ASSIGNMENT OF THOSE HOME LOANS, INTENDED BY
12 THE PURCHASER OR ASSIGNEE TO PREVENT THE PURCHASER OR ASSIGNEE FROM
13 PURCHASING OR TAKING ASSIGNMENT OF ANY HIGH-COST HOME LOANS.
14 HOWEVER, FOR PURPOSES OF THIS SUBDIVISION, REASONABLE DUE DILIGENCE
15 SHALL PROVIDE FOR SAMPLING AND SHALL NOT REQUIRE LOAN-BY-LOAN
16 REVIEW.

17 (2) LIMITED TO AN AMOUNT EQUAL TO THE MONTHLY PAYMENTS ALREADY
18 MADE UNDER THE LOAN AGREEMENT, ANY FINANCE CHARGES OTHER THAN THOSE
19 ALREADY COLLECTED IN THE MONTHLY PAYMENTS MADE UNDER A HOME LOAN,
20 FORFEITURE OF FUTURE INTEREST ON THE LOAN, REASONABLE COSTS, AND
21 REASONABLE ATTORNEY FEES, A BORROWER ACTING ONLY IN AN INDIVIDUAL
22 CAPACITY MAY ASSERT CLAIMS THAT THE BORROWER COULD ASSERT AGAINST
23 THE CREDITOR OF THE HOME LOAN AGAINST ANY SUBSEQUENT HOLDER OR
24 ASSIGNEE OF THE HOME LOAN AS FOLLOWS:

25 (A) WITHIN 5 YEARS OF THE CLOSING OF A HIGH-COST HOME LOAN, A
26 VIOLATION OF THIS ACT IN CONNECTION WITH THE LOAN AS AN ORIGINAL
27 ACTION.

1 (B) AT ANY TIME DURING THE TERM OF A HIGH-COST HOME LOAN,
2 AFTER AN ACTION TO COLLECT ON THE HOME LOAN OR FORECLOSE ON THE
3 COLLATERAL SECURING THE HOME LOAN HAS BEEN INITIATED OR THE DEBT
4 ARISING FROM THE HOME LOAN HAS BEEN ACCELERATED OR THE HOME LOAN
5 HAS BECOME 60 DAYS IN DEFAULT, ANY DEFENSE, CLAIM OR COUNTERCLAIM,
6 OR ACTION TO ENJOIN FORECLOSURE OR PRESERVE OR OBTAIN POSSESSION OF
7 THE HOME THAT SECURES THE LOAN.

8 (3) THE PROVISIONS OF THIS SECTION ARE EFFECTIVE
9 NOTWITHSTANDING ANY OTHER PROVISION OF LAW. HOWEVER, THIS SECTION
10 SHALL NOT BE CONSTRUED TO LIMIT THE SUBSTANTIVE RIGHTS, REMEDIES,
11 OR PROCEDURAL RIGHTS AVAILABLE TO A BORROWER AGAINST ANY CREDITOR,
12 ASSIGNEE, OR HOLDER UNDER ANY OTHER LAW. THE RIGHTS CONFERRED ON
13 BORROWERS BY SUBSECTIONS (1) AND (2) ARE INDEPENDENT OF EACH OTHER
14 AND DO NOT LIMIT EACH OTHER.

15 SEC. 7B. (1) SUBJECT TO SUBSECTIONS (8) AND (9), IN A CIVIL
16 ACTION, IF A PERSON IS FOUND BY A PREPONDERANCE OF THE EVIDENCE TO
17 HAVE VIOLATED THIS ACT, THE COURT MAY AWARD THE BORROWER ALL OF THE
18 FOLLOWING:

19 (A) ACTUAL DAMAGES, INCLUDING CONSEQUENTIAL AND INCIDENTAL
20 DAMAGES. A BORROWER IS NOT REQUIRED TO DEMONSTRATE RELIANCE IN
21 ORDER TO RECEIVE ACTUAL DAMAGES.

22 (B) FOR A VIOLATION OF SECTION 3 OR 4, STATUTORY DAMAGES IN AN
23 AMOUNT EQUAL TO THE MONTHLY PAYMENTS ALREADY MADE UNDER THE LOAN
24 AGREEMENT, ANY FINANCE CHARGES OTHER THAN THOSE ALREADY COLLECTED
25 IN THE MONTHLY PAYMENTS MADE UNDER THE LOAN AND FORFEITURE OF
26 FUTURE INTEREST ON THE LOAN.

27 (C) IF THE VIOLATION IS MALICIOUS OR RECKLESS, PUNITIVE

1 DAMAGES.

2 (D) COSTS AND REASONABLE ATTORNEY FEES.

3 (2) THE ATTORNEY GENERAL, THE PROSECUTING ATTORNEY FOR THE
4 COUNTY WHERE AN ALLEGED VIOLATION OCCURRED, OR A BORROWER MAY BRING
5 AN ACTION AGAINST A PERSON FOR INJUNCTIVE, DECLARATORY, AND ANY
6 OTHER EQUITABLE RELIEF TO ENFORCE COMPLIANCE WITH THIS ACT.

7 (3) THE RIGHT OF RESCISSION GRANTED UNDER THE TRUTH IN LENDING
8 ACT, 15 USC 1601 TO 1667F, FOR A VIOLATION OF THAT LAW IS AVAILABLE
9 TO A BORROWER BY WAY OF RECOUPMENT AGAINST A PARTY FORECLOSING ON
10 THE HOME LOAN OR COLLECTING ON THE LOAN, AT ANY TIME DURING THE
11 TERM OF THE LOAN. THIS SUBSECTION DOES NOT LIMIT ANY RECOUPMENT
12 RIGHT AVAILABLE TO A BORROWER UNDER ANY OTHER LAW.

13 (4) FOR PURPOSES OF THIS SECTION, A CREDITOR OR ASSIGNEE IN A
14 HOME LOAN WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS ACT WHILE
15 ACTING IN GOOD FAITH IS NOT IN VIOLATION OF THIS ACT IF THAT
16 CREDITOR OR ASSIGNEE ESTABLISHES EITHER OF THE FOLLOWING:

17 (A) WITHIN 60 DAYS OF THE LOAN CLOSING, AND BEFORE RECEIVING
18 ANY NOTICE OF THE COMPLIANCE FAILURE, THE CREDITOR OR ASSIGNEE MADE
19 APPROPRIATE RESTITUTION TO THE BORROWER AND APPROPRIATE ADJUSTMENTS
20 TO THE LOAN.

21 (B) WITHIN 90 DAYS OF THE LOAN CLOSING AND BEFORE RECEIVING
22 ANY NOTICE OF THE COMPLIANCE FAILURE, AND THE COMPLIANCE FAILURE
23 WAS NOT INTENTIONAL AND RESULTED FROM A BONA FIDE ERROR
24 NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADAPTED TO
25 AVOID THOSE ERRORS, THE BORROWER IS NOTIFIED OF THE COMPLIANCE
26 FAILURE, APPROPRIATE RESTITUTION IS MADE TO THE BORROWER, AND
27 APPROPRIATE ADJUSTMENTS ARE MADE TO THE LOAN. AS USED IN THIS

1 SUBSECTION, A "BONA FIDE ERROR" INCLUDES, BUT IS NOT LIMITED TO, A
2 COMPUTER MALFUNCTION OR A CLERICAL, CALCULATION, COMPUTER
3 PROGRAMMING, OR PRINTING ERROR. AN ERROR OF LEGAL JUDGMENT WITH
4 RESPECT TO A PERSON'S OBLIGATIONS UNDER THIS SECTION IS NOT A BONA
5 FIDE ERROR.

6 (5) THE REMEDIES PROVIDED IN THIS SECTION ARE CUMULATIVE AND
7 ARE NOT THE EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER. A BORROWER
8 IS NOT REQUIRED TO EXHAUST ANY ADMINISTRATIVE REMEDIES PROVIDED
9 UNDER THIS ACT OR ANY OTHER APPLICABLE LAW BEFORE PROCEEDING UNDER
10 THIS SECTION.

11 (6) A PROVISION IN AN AGREEMENT FOR A HOME LOAN THAT ALLOWS A
12 PERSON TO REQUIRE A BORROWER, INDIVIDUALLY OR ON BEHALF OF
13 SIMILARLY SITUATED BORROWERS, TO ASSERT ANY LEGAL CLAIM OR DEFENSE
14 IN A FORUM LOCATED OUTSIDE OF THIS STATE OR LIMITS IN ANY WAY A
15 CLAIM OR DEFENSE THE BORROWER MAY HAVE IS VOID AND UNENFORCEABLE.

16 (7) A PERSON SHALL NOT ATTEMPT IN BAD FAITH TO AVOID THE
17 APPLICATION OF THIS ACT BY DIVIDING ANY HOME LOAN TRANSACTION INTO
18 SEPARATE PARTS, STRUCTURE A HOME LOAN TRANSACTION AS AN OPEN-END
19 LOAN FOR THE PURPOSE OF EVADING THIS ACT IF THE LOAN WOULD HAVE
20 BEEN A HIGH-COST HOME LOAN IF THE LOAN HAD BEEN STRUCTURED AS A
21 CLOSED-END LOAN, OR ENGAGE IN ANY OTHER SUBTERFUGE WITH THE INTENT
22 OF EVADING THIS ACT.

23 (8) A BORROWER MAY ONLY ASSERT A CLAIM UNDER THIS ACT ON HIS
24 OR HER OWN BEHALF AND MAY NOT ASSERT CLAIMS ON BEHALF OF SIMILARLY
25 SITUATED BORROWERS.

26 (9) A BORROWER WHO IS ILLEGALLY RESIDING IN THE UNITED STATES
27 MAY NOT ASSERT A CLAIM UNDER THIS ACT.

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

4 (a) Senate Bill No. ____ or House Bill No. 4592 (request no.
5 01098'09).

6 (b) Senate Bill No. ____ or House Bill No. 4587 (request no.
7 01099'09).

8 (c) Senate Bill No. ____ or House Bill No. 4585 (request no.
9 01100'09).

10 (d) Senate Bill No. ____ or House Bill No. 4586 (request no.
11 01101'09).

12 (e) Senate Bill No. ____ or House Bill No. 4590 (request no.
13 01104'09).

14 (f) Senate Bill No. ____ or House Bill No. 4589 (request no.
15 01105'09).

16 (g) Senate Bill No. ____ or House Bill No. 4591 (request no.
17 01106'09).

18 (h) Senate Bill No. ____ or House Bill No. 4588 (request no.
19 01107'09).