

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 43

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 219d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 219D. (1) A PERSON THAT KNOWINGLY, WITH THE INTENT TO
2 DEFRAUD, DOES ANY OF THE FOLLOWING IS GUILTY OF THE CRIME OF
3 RESIDENTIAL MORTGAGE FRAUD, PUNISHABLE AS PROVIDED IN THIS SECTION:

4 (A) MAKES A FALSE STATEMENT OR MISREPRESENTATION CONCERNING A
5 MATERIAL FACT OR DELIBERATELY CONCEALS OR FAILS TO DISCLOSE A
6 MATERIAL FACT DURING THE MORTGAGE LENDING PROCESS.

7 (B) DURING THE MORTGAGE LENDING PROCESS, MAKES OR USES A FALSE
8 PRETENSE, OR USES OR FACILITATES THE USE OF ANOTHER PERSON'S FALSE
9 PRETENSE, CONCERNING THE PERSON'S INTENT TO PERFORM A FUTURE EVENT

1 OR TO HAVE A FUTURE EVENT PERFORMED. AS USED IN THIS SUBDIVISION,
2 "FALSE PRETENSE" MEANS THAT TERM AS DEFINED IN SECTION 218.

3 (C) USES OR FACILITATES THE USE OF A FALSE STATEMENT OR
4 MISREPRESENTATION MADE BY ANOTHER PERSON CONCERNING A MATERIAL FACT
5 OR DELIBERATELY USES OR FACILITATES THE USE OF ANOTHER PERSON'S
6 CONCEALMENT OR FAILURE TO DISCLOSE A MATERIAL FACT DURING THE
7 MORTGAGE LENDING PROCESS.

8 (D) RECEIVES OR ATTEMPTS TO RECEIVE ANY PROCEEDS OR ANY OTHER
9 MONEY IN CONNECTION WITH THE MORTGAGE LENDING PROCESS THAT THE
10 PERSON KNOWS RESULTED FROM A VIOLATION OF SUBDIVISION (A) OR (B).

11 (E) FILES OR CAUSES TO BE FILED WITH THE REGISTER OF DEEDS OF
12 ANY COUNTY OF THIS STATE ANY DOCUMENT INVOLVED IN THE MORTGAGE
13 LENDING PROCESS THAT THE PERSON KNOWS TO CONTAIN A DELIBERATE
14 MATERIAL MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

15 (F) FAILS TO DISBURSE FUNDS IN ACCORDANCE WITH THE SETTLEMENT
16 OR CLOSING STATEMENT FOR THE MORTGAGE LOAN.

17 (G) CONSPIRES TO VIOLATE SUBDIVISION (A), (B), (C), (D), (E),
18 OR (F).

19 (H) SOLICITS, ENCOURAGES, OR COERCES ANOTHER PERSON TO VIOLATE
20 SUBDIVISION (A), (B), (C), (D), (E), OR (F).

21 (2) A CRIME OF RESIDENTIAL MORTGAGE FRAUD UNDER THIS SECTION
22 SHALL NOT BE PREDICATED SOLELY UPON INFORMATION LAWFULLY DISCLOSED
23 UNDER FEDERAL DISCLOSURE LAWS, REGULATIONS, OR INTERPRETATIONS
24 RELATED TO THE MORTGAGE LENDING PROCESS.

25 (3) FOR THE PURPOSE OF DETERMINING VENUE OF A PROSECUTION
26 UNDER THIS SECTION, A VIOLATION OF THIS SECTION IS CONSIDERED TO
27 HAVE BEEN COMMITTED IN ANY OF THE FOLLOWING:

1 (A) IN THE COUNTY IN WHICH THE RESIDENTIAL PROPERTY FOR WHICH
2 THE MORTGAGE LOAN IS OBTAINED OR SOUGHT IS LOCATED.

3 (B) IN THE COUNTY IN WHICH AN OWNER OF THE PROPERTY FOR WHICH
4 THE MORTGAGE LOAN WAS OBTAINED OR SOUGHT RESIDES.

5 (C) IN ANY COUNTY IN WHICH A MATERIAL ACT WAS PERFORMED IN
6 FURTHERANCE OF THE VIOLATION.

7 (4) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
8 PUNISHABLE BY 1 OF THE FOLLOWING:

9 (A) EXCEPT FOR A VIOLATION DESCRIBED IN SUBDIVISION (B),
10 IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE OF NOT MORE THAN
11 \$100,000.00, OR BOTH.

12 (B) IF THE VIOLATION OCCURS IN CONNECTION WITH THE MORTGAGE
13 LENDING PROCESS IN WHICH THE LOAN VALUE STATED ON DOCUMENTS USED IN
14 THE MORTGAGE LENDING PROCESS EXCEEDS \$100,000.00, IMPRISONMENT FOR
15 NOT MORE THAN 20 YEARS OR A FINE OF NOT MORE THAN \$500,000.00, OR
16 BOTH.

17 (5) EACH VIOLATION OF THIS SECTION CONSTITUTES A SEPARATE
18 OFFENSE.

19 (6) THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING CHARGED
20 WITH, CONVICTED OF, OR PUNISHED FOR ANY OTHER VIOLATION OF LAW THAT
21 IS COMMITTED BY THAT PERSON WHILE VIOLATING THIS SECTION.

22 (7) IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION OF A
23 DEFENDANT FOR A VIOLATION OF THIS SECTION COMMITTED BY AN EMPLOYEE
24 OR AGENT OF THE DEFENDANT IF THE DEFENDANT DEMONSTRATES ALL OF THE
25 FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

26 (A) THE DEFENDANT HAD IN FORCE AT THE TIME OF THE VIOLATION
27 AND CONTINUES TO HAVE IN FORCE A WRITTEN POLICY THAT INCLUDES AT

1 LEAST ALL OF THE FOLLOWING:

2 (i) A PROHIBITION AGAINST CONDUCT THAT VIOLATES THIS SECTION BY
3 EMPLOYEES AND AGENTS OF THE DEFENDANT.

4 (ii) PENALTIES OR DISCIPLINE FOR VIOLATION OF THE POLICY.

5 (iii) A PROCESS FOR EDUCATING EMPLOYEES AND AGENTS CONCERNING
6 THE POLICY AND CONSEQUENCES OF A VIOLATION.

7 (iv) A REQUIREMENT FOR A CRIMINAL HISTORY CHECK BEFORE
8 EMPLOYING AN EMPLOYEE OR ENGAGING AN AGENT AND A REQUIREMENT THAT
9 THE DEFENDANT WILL NOT EMPLOY OR ENGAGE AN INDIVIDUAL WHOSE
10 CRIMINAL HISTORY CHECK REVEALS A PREVIOUS CONVICTION OF A CRIME
11 INVOLVING FRAUD.

12 (B) THE DEFENDANT DEMONSTRATES THAT IT ENFORCES THE WRITTEN
13 POLICY DESCRIBED IN SUBDIVISION (A).

14 (C) BEFORE THE VIOLATION OF THIS SECTION, THE DEFENDANT
15 COMMUNICATED THE WRITTEN POLICY DESCRIBED IN SUBDIVISION (A) AND
16 THE CONSEQUENCES FOR VIOLATING THE POLICY TO THE EMPLOYEE OR AGENT
17 WHO COMMITTED THE VIOLATION.

18 (8) PROPERTY OF ANY KIND USED OR INTENDED FOR USE IN THE
19 COURSE OF, DERIVED FROM, OR RECEIVED IN CONNECTION WITH A VIOLATION
20 OF THIS SECTION BY THE PERSON THAT VIOLATED THIS SECTION IS SUBJECT
21 TO FORFEITURE IN THE SAME MANNER AS PROVIDED IN CHAPTER 47 OF THE
22 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.4701 TO
23 600.4709.

24 (9) ALL OF THE FOLLOWING APPLY IF A PERSON IS CONVICTED OF A
25 VIOLATION OF SUBSECTION (1) OR OF A LESSER INCLUDED OFFENSE IN
26 CONNECTION WITH A COMPLETED RESIDENTIAL MORTGAGE LOAN TRANSACTION:

27 (A) WITHIN 6 MONTHS OF THE DATE OF THE CONVICTION, THE

1 MORTGAGOR WHO OBTAINED THE RESIDENTIAL MORTGAGE LOAN MAY REQUEST AN
2 ORDER DESCRIBED IN SUBDIVISION (B) IF THE COURT MAKES ALL OF THE
3 FOLLOWING FINDINGS:

4 (i) THE MORTGAGOR WAS A VICTIM OF THE RESIDENTIAL MORTGAGE
5 FRAUD AND WAS NOT INVOLVED IN ANY CRIMINAL ACTIVITY.

6 (ii) THE MORTGAGOR DID NOT KNOWINGLY APPLY FOR THE RESIDENTIAL
7 MORTGAGE LOAN OR EXECUTE THE DOCUMENTS INVOLVED IN THE MORTGAGE
8 LENDING PROCESS.

9 (B) IF SUBDIVISION (A) IS MET, THE COURT SHALL ENTER AN ORDER
10 INDICATING THAT THE RESIDENTIAL MORTGAGE AND OTHER DOCUMENTS
11 INVOLVED IN THE MORTGAGE LENDING PROCESS ARE INVALID. THE COURT
12 SHALL REQUIRE THAT THE VICTIM OF THE RESIDENTIAL MORTGAGE FRAUD
13 RECORD A CERTIFIED COPY OF THE ORDER AND A COPY OF THE INVALID
14 RESIDENTIAL MORTGAGE IN THE OFFICE OF THE REGISTER OF DEEDS OF THE
15 COUNTY WHERE THE MORTGAGED RESIDENTIAL PROPERTY IS LOCATED, AND THE
16 REGISTER OF DEEDS SHALL RECORD THOSE DOCUMENTS AS PROVIDED IN
17 SECTION 2935 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
18 MCL 600.2935. THE COURT SHALL DESIGNATE IN THE ORDER THE PERSON
19 RESPONSIBLE FOR PAYING THE FEE FOR RECORDING THOSE DOCUMENTS.

20 (C) IF A MORTGAGOR DESCRIBED IN SUBDIVISION (A) REQUESTS AN
21 ORDER DESCRIBED IN SUBDIVISION (B), AND THE RESIDENTIAL MORTGAGE OR
22 ANY OTHER DOCUMENTS INVOLVED IN THE MORTGAGE LENDING PROCESS WERE
23 PREVIOUSLY RECORDED, THE PROSECUTOR IN THE CRIMINAL PROCEEDING
24 SHALL PROVIDE THE CIRCUIT COURT WITH THE NAME OF THE COUNTY IN
25 WHICH THE DOCUMENT OR DOCUMENTS WERE RECORDED AND THE LIBER AND
26 PAGE NUMBER OR UNIQUE IDENTIFYING REFERENCE NUMBER OF THE RECORDED
27 RESIDENTIAL MORTGAGE OR OTHER DOCUMENT OR DOCUMENTS, AND THE COURT

1 SHALL INCLUDE THAT INFORMATION IN THE ORDER.

2 (D) IF A COUNTY REGISTER OF DEEDS RECEIVES A CERTIFIED COPY OF
3 AN ORDER AND A COPY OF THE INVALID RESIDENTIAL MORTGAGE FOR
4 RECORDING, THE REGISTER OF DEEDS SHALL MAKE REFERENCE TO THE LIBER
5 AND PAGE NUMBER OR UNIQUE IDENTIFYING REFERENCE NUMBER OF THE
6 INVALID RESIDENTIAL MORTGAGE IN THE INDEX OF THE RECORDED
7 DOCUMENTS.

8 (E) IF THE CIRCUIT COURT ENTERS AN ORDER DESCRIBED IN
9 SUBDIVISION (B), BEFORE THE ORDER IS RECORDED, THE VICTIM OF THE
10 RESIDENTIAL MORTGAGE FRAUD SHALL PROVIDE WRITTEN NOTICE TO THE
11 RESIDENTIAL MORTGAGE LENDER, AND ANY SUCCESSORS OR ASSIGNS OF THE
12 LENDER, THAT THE COURT HAS ENTERED THE ORDER. A LENDER AND ANY
13 SUCCESSOR OR ASSIGNEE OF A LENDER THAT RECEIVES A NOTICE UNDER THIS
14 SUBDIVISION MAY REQUEST A COURT HEARING TO CONTEST THE COURT'S
15 ORDER, BUT THAT PERSON MUST REQUEST THE HEARING WITHIN 30 DAYS
16 AFTER RECEIVING THE NOTICE.

17 (10) AS USED IN THIS SECTION:

18 (A) "DOCUMENTS INVOLVED IN THE MORTGAGE LENDING PROCESS"
19 INCLUDES, BUT IS NOT LIMITED TO, MORTGAGES; DEEDS; SURVEYS;
20 INSPECTION REPORTS; UNIFORM RESIDENTIAL LOAN APPLICATIONS OR OTHER
21 LOAN APPLICATIONS; APPRAISAL REPORTS; HUD-1 SETTLEMENT STATEMENTS;
22 SUPPORTING PERSONAL DOCUMENTATION FOR LOAN APPLICATIONS SUCH AS W-2
23 FORMS, VERIFICATIONS OF INCOME AND EMPLOYMENT, BANK STATEMENTS, TAX
24 RETURNS, AND PAYROLL STUBS; AND ANY WRITTEN DISCLOSURES REQUIRED BY
25 LAW.

26 (B) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH WHICH
27 A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN, INCLUDING,

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1 BUT NOT LIMITED TO, SOLICITATION, APPLICATION, OR ORIGINATION,
2 NEGOTIATION OF TERMS, THIRD-PARTY PROVIDER SERVICES, UNDERWRITING,
3 SIGNING AND CLOSING, AND FUNDING OF THE LOAN.

4 (C) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED
5 LIABILITY COMPANY, PARTNERSHIP, TRUSTEE, ASSOCIATION, OR OTHER
6 LEGAL ENTITY.

7 (D) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN OR AGREEMENT TO
8 EXTEND CREDIT MADE TO A PERSON THAT IS SECURED BY A MORTGAGE,
9 SECURITY INTEREST, OR OTHER DOCUMENT REPRESENTING A SECURITY
10 INTEREST OR LIEN ON ANY INTEREST IN A 1-FAMILY TO 4-FAMILY DWELLING
11 LOCATED IN THIS STATE. THE TERM INCLUDES A RENEWAL, EXTENSION, OR
12 REFINANCING OF A RESIDENTIAL MORTGAGE LOAN.

[Enacting section 1. This amendatory act takes effect January 1,
2012.]