

SENATE BILL No. 43

January 19, 2011, Introduced by Senator HUNTER and referred to the Committee on Banking and Financial Institutions.

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) USES OR FACILITATES THE USE OF A FALSE STATEMENT OR
8 MISREPRESENTATION MADE BY ANOTHER PERSON CONCERNING A MATERIAL FACT
9 OR DELIBERATELY USES OR FACILITATES THE USE OF ANOTHER PERSON'S
10 CONCEALMENT OR FAILURE TO DISCLOSE A MATERIAL FACT DURING THE

1 MORTGAGE LENDING PROCESS.

2 (C) RECEIVES OR ATTEMPTS TO RECEIVE ANY PROCEEDS OR ANY OTHER
3 MONEY IN CONNECTION WITH THE MORTGAGE LENDING PROCESS THAT THE
4 PERSON KNEW RESULTED FROM A VIOLATION OF SUBDIVISION (A) OR (B).

5 (D) FILES OR CAUSES TO BE FILED WITH THE REGISTER OF DEEDS OF
6 ANY COUNTY OF THIS STATE ANY DOCUMENT INVOLVED IN THE MORTGAGE
7 LENDING PROCESS THAT THE PERSON KNOWS TO CONTAIN A DELIBERATE
8 MATERIAL MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

9 (E) FAILS TO DISBURSE FUNDS IN ACCORDANCE WITH A LOAN
10 COMMITMENT MADE IN CONNECTION WITH THE MORTGAGE LENDING PROCESS.

11 (F) CONSPIRES TO VIOLATE SUBDIVISION (A), (B), (C), (D), OR
12 (E).

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

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

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

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

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

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

1 (A) EXCEPT FOR A VIOLATION DESCRIBED IN SUBDIVISION (B),
2 IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE OF NOT MORE THAN
3 \$100,000.00, OR BOTH.

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

9 (5) EACH VIOLATION OF THIS SECTION CONSTITUTES A SEPARATE
10 OFFENSE.

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

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

20 (8) IF A LENDER OR ANY AGENT OF THE LENDER IS CONVICTED OF A
21 VIOLATION OF THIS SECTION, THE BORROWER IN THE MORTGAGE LENDING
22 TRANSACTION WITH REGARD TO WHICH THE VIOLATION WAS COMMITTED MAY
23 RESCIND THE TRANSACTION WITHIN 6 MONTHS AFTER THE DATE OF THE
24 CONVICTION IF THE BORROWER GIVES WRITTEN NOTICE TO THE LENDER AND
25 RECORDS THAT NOTICE WITH THE REGISTER OF DEEDS OF THE COUNTY IN
26 WHICH THE MORTGAGE WAS RECORDED.

27 (9) AS USED IN THIS SECTION:

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

9 (B) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH WHICH
10 A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN, INCLUDING,
11 BUT NOT LIMITED TO, SOLICITATION, APPLICATION, OR ORIGINATION,
12 NEGOTIATION OF TERMS, THIRD-PARTY PROVIDER SERVICES, UNDERWRITING,
13 SIGNING AND CLOSING, AND FUNDING OF THE LOAN.

14 (C) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED
15 LIABILITY COMPANY, PARTNERSHIP, TRUSTEE, ASSOCIATION, OR OTHER
16 LEGAL ENTITY.

17 (D) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN OR AGREEMENT TO
18 EXTEND CREDIT MADE TO A PERSON THAT IS SECURED BY A MORTGAGE,
19 SECURITY INTEREST, OR OTHER DOCUMENT REPRESENTING A SECURITY
20 INTEREST OR LIEN ON ANY INTEREST IN A 1-FAMILY TO 4-FAMILY DWELLING
21 LOCATED IN THIS STATE. THE TERM INCLUDES A RENEWAL, EXTENSION, OR
22 REFINANCING OF A RESIDENTIAL MORTGAGE LOAN.