

HOUSE BILL No. 6291

September 29, 2004, Introduced by Rep. Hunter and referred to the Committee on Commerce.

A bill to amend 2002 PA 660, entitled "Consumer mortgage protection act," by amending the title and sections 1, 2, 4, 5, 8, 9, 10, 12, and 15 (MCL 445.1631, 445.1632, 445.1634, 445.1635, 445.1638, 445.1639, 445.1640, 445.1642, and 445.1645); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to prohibit certain lending practices; to require
3 disclosure of certain information for home loans **and high-cost**
4 **home loans**; to prescribe certain duties and obligations of the
5 lender in a home loan **or high-cost home loan** transaction; ~~to~~
6 ~~prescribe the powers and duties of certain state agencies and~~
7 ~~officials;~~ and to prescribe penalties and provide for remedies.

8 Sec. 1. This act shall be known and may be cited as the

1 ~~"consumer mortgage"~~ **"home loan protection act"**.

2 Sec. 2. (1) As used in this act:

3 ~~(a) "Commissioner" means the commissioner of the office of~~
4 ~~financial and insurance services of the department of consumer~~
5 ~~and industry services.~~

6 ~~(b) "Depository institution" means a bank, savings and loan~~
7 ~~association, savings bank, or a credit union chartered under~~
8 ~~state or federal law.~~

9 ~~(c) "Home improvement installment contract" means an~~
10 ~~agreement of 1 or more documents covering the sale of goods or~~
11 ~~furnishing of services to a buyer for improvements to the buyer's~~
12 ~~principal dwelling located in this state used for occupancy of 4~~
13 ~~or fewer families under which the buyer promises to pay in~~
14 ~~installments all or any part of the price of the goods or~~
15 ~~services.~~

16 ~~(d) "Mortgage loan" means a loan or home improvement~~
17 ~~installment contract secured by a first or subordinate mortgage~~
18 ~~or any other form of lien or a land contract covering real~~
19 ~~property located in this state used as the borrower's principal~~
20 ~~dwelling and designed for occupancy by 4 or fewer families.~~

21 ~~Mortgage loan does not include any of the following:~~

22 ~~(i) Loans in which the proceeds are used to acquire the~~
23 ~~dwelling.~~

24 ~~(ii) Reverse mortgage transactions.~~

25 ~~(iii) An open end credit plan being a loan in which the~~
26 ~~lender reasonably contemplates repeated advances.~~

27 ~~(e) "Person" means an individual, corporation, partnership,~~

1 ~~association, governmental entity, or any other legal entity.~~

2 ~~—— (f) "Reverse mortgage" means a nonrecourse loan under which~~
3 ~~both of the following apply:~~

4 ~~—— (i) A mortgage or other form of lien securing 1 or more~~
5 ~~advances is created in the borrower's principal dwelling.~~

6 ~~—— (ii) The principal, interest, or shared appreciation or~~
7 ~~equity is payable only after the borrower dies, the dwelling is~~
8 ~~transferred, or the borrower ceases to occupy the dwelling as a~~
9 ~~principal dwelling.~~

10 ~~—— (g) "Regulated lender" means a depository institution or a~~
11 ~~licensee or a registrant under the consumer financial services~~
12 ~~act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379,~~
13 ~~MCL 493.101 to 493.114, the secondary mortgage loan act, 1981~~
14 ~~PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders,~~
15 ~~and servicers licensing act, 1987 PA 173, MCL 445.1651 to~~
16 ~~445.1684, and a seller under the home improvement finance act,~~
17 ~~1965 PA 332, MCL 445.1101 to 445.1431.~~

18 ~~—— (h) "State and federal laws" means, individually and~~
19 ~~collectively, 1 or more of the laws or regulations of this state~~
20 ~~or the federal government which regulate or are applicable to a~~
21 ~~mortgage loan or a person when brokering, making, servicing, or~~
22 ~~collecting a mortgage loan, including, without limitation, the~~
23 ~~federal truth in lending act, title I of the consumer credit~~
24 ~~protection act, Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610~~
25 ~~to 1613, 1615, 1631 to 1635, 1637 to 1649, and 1661 to 1667f,~~
26 ~~real estate settlement procedures act of 1974, Public Law 93-533,~~
27 ~~88 Stat. 1724, equal credit opportunity act, title VII of the~~

~~1 consumer credit protection act, Public Law 90-321, 15 U.S.C. 1691
2 to 1691f, fair housing act, title VIII of the civil rights act of
3 1968, Public Law 90-284, 82 Stat. 81, fair credit report act,
4 title VI of the consumer credit protection act, Public Law
5 90-321, 15 U.S.C. 1681 to 1681v, the homeowners protection act of
6 1998, Public Law 105-216, 112 Stat. 897, the fair debt collection
7 practices act, title VIII of the consumer credit protection act,
8 Public Law 90-321, 15 U.S.C. 1601nt and 1692 to 1692o, consumer
9 financial services act, 1988 PA 161, MCL 487.2051 to 487.2072,
10 mortgage brokers, lenders, and servicers licensing act, 1987
11 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan
12 act, 1981 PA 125, MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601
13 to 445.1614, and home improvement finance act, 1965 PA 332,
14 MCL 445.1101 to 445.1422.~~

15 (a) "Affiliate" means a company that controls, is controlled
16 by, or is under common control with another company.

17 (b) "Annual percentage rate" means an annual percentage rate
18 for a loan determined under 12 CFR part 226.

19 (c) "Bona fide discount points" means an amount paid by a
20 borrower that meets all of the following:

21 (i) It is knowingly paid by the borrower for the express
22 purpose of reducing the interest rate applicable to a home loan.

23 (ii) It actually reduces the interest rate applicable to the
24 home loan.

25 (iii) It is paid in connection with a home loan for which the
26 undiscounted interest rate does not exceed the conventional
27 mortgage rate by 2 or more percentage points for a home loan

1 secured by a first lien or by 3-1/2 or more percentage points for
2 a home loan secured by a subordinated lien.

3 (d) "Borrower" means any natural person obligated to repay a
4 loan, including a coborrower, cosigner, or guarantor.

5 (e) "Company" means a person other than a natural person.

6 (f) "Conventional mortgage rate" means the most recently
7 published annual yield on conventional mortgages published by the
8 board of governors of the federal reserve system in statistical
9 release H.15, or any publication that may supersede it, as of the
10 applicable time set forth in 12 CFR 226.32(a)(1)(i).

11 (g) "Conventional prepayment penalty" means a prepayment
12 penalty or fee that is collected or charged in a home loan and
13 that is authorized by law other than this act, if the home loan
14 does not have an annual percentage rate that exceeds the
15 conventional mortgage rate by more than 2 percentage points and
16 does not permit any prepayment fees or penalties that exceed 2%
17 of the amount prepaid.

18 (h) "Creditor" means a lender, as that term is defined in 24
19 CFR 3500.2, or a mortgage broker.

20 (i) "Excluded points and fees" means, in connection with a
21 home loan, 1% of the total loan amount attributable to bona fide
22 fees paid to a federal or state government agency that insures
23 payment of some portion of a home loan, plus an amount that does
24 not exceed 2% of the loan amount attributable to either bona fide
25 discount points or a conventional prepayment penalty, but not
26 both.

27 (j) "High-cost home loan" means a home loan in which the

1 terms of the loan meet or exceed 1 or more thresholds.

2 (k) "Home loan" means an open-end credit plan or extension of
3 credit that meets all of the following:

4 (i) It does not exceed the maximum original principal
5 obligation as set forth in and from time to time adjusted under
6 section 305(a)(2) of the federal home loan mortgage act, 12 USC
7 1454(a)(2).

8 (ii) It meets the requirements for a federally related
9 mortgage loan under 24 CFR 3500.2.

10 (iii) It is not a reverse mortgage transaction or a loan
11 primarily for business, agricultural, or commercial purposes.

12 (l) "Mortgage broker" means that term as defined in 24 CFR
13 3500.2.

14 (m) Subject to subsection (2), "points and fees" means all of
15 the following:

16 (i) All items included in the definition of finance charge in
17 12 CFR 226.4(a) and 12 CFR 226.4(b), except interest or the time
18 price differential.

19 (ii) All items described in 12 CFR 226.32(b)(1)(iii).

20 (iii) All compensation paid directly or indirectly to a
21 mortgage broker from any source, including a mortgage broker that
22 originates a loan in its own name in a table-funded transaction.

23 (iv) The cost of all premiums directly or indirectly financed
24 by the creditor for any credit life, credit disability, credit
25 unemployment, or credit property insurance, or any other life or
26 health insurance, or any payments directly or indirectly financed
27 by the creditor for any debt cancellation or suspension agreement

1 or contract. However, insurance premiums paid on a monthly basis
2 or debt cancellation or suspension fees calculated and paid on a
3 monthly basis are not considered financed by the creditor.

4 (v) The maximum prepayment fees and penalties that may be
5 charged or collected under the terms of the loan documents.

6 (vi) All prepayment fees or penalties that are incurred by
7 the borrower if the loan refinances a previous loan originated or
8 currently held by the same creditor or an affiliate of the
9 creditor.

10 (vii) For an open-end loan, points and fees are calculated by
11 adding the total points and fees known at or before closing,
12 including the maximum prepayment penalties that may be charged or
13 collected under the terms of the loan documents, plus the minimum
14 additional fees the borrower must pay to draw down an amount
15 equal to the total credit line.

16 (n) "Rate threshold" means an annual percentage rate
17 calculated under 12 CFR 226.32(a)(1)(i), whether the home loan is
18 a "residential mortgage transaction" or an extension of "open-end
19 credit" as those terms are defined in 12 CFR 226.2.

20 (o) "Servicer" means that term as defined in 24 CFR 3500.2.

21 (p) "Servicing" means that term as defined in 12 CFR 3500.2.
22 The term also includes any other activities or responsibilities
23 undertaken in connection with a home loan by a person who acts as
24 a servicer with respect to that home loan, including, but not
25 limited to, collection and default management functions.

26 (q) "Threshold" means a rate threshold or a total points and
27 fees threshold.

1 (r) "Total loan amount" means the principal of the loan minus
2 those points and fees that are included in the principal amount
3 of the loan. For an open-end loan, the total loan amount is
4 calculated using the total line of credit allowed under the home
5 loan at closing.

6 (s) "Total points and fees threshold" means 1 of the
7 following, as applicable:

8 (i) For a home loan in which the total loan amount is
9 \$20,000.00 or more, the total points and fees payable in
10 connection with the home loan exceed 4% of the total loan
11 amount.

12 (ii) For a home loan in which the total loan amount is less
13 than \$20,000.00, the total points and fees payable in connection
14 with the home loan exceed \$800.00 or 7% of the total loan amount,
15 whichever is less.

16 (t) "Truth in lending act" means the federal truth in lending
17 act, 15 USC 1601 to 1667f.

18 (2) Points and fees do not include any of the following:

19 (a) Taxes, filing fees, recording fees, or other charges or
20 fees paid to or required by a public official for determining the
21 existence of or for perfecting, releasing, or satisfying a
22 security interest.

23 (b) Bona fide and reasonable fees paid to a person other than
24 a creditor or an affiliate of the creditor for any of the
25 following:

26 (i) Tax payment services.

27 (ii) Flood certification.

- 1 (iii) Pest infestation or flood determination.
2 (iv) Appraisal.
3 (v) Inspections performed before the closing.
4 (vi) Credit reports.
5 (vii) Surveys.
6 (viii) Attorney fees, if the borrower has the right to select
7 the attorney from an approved list or otherwise.
8 (ix) Notary fees.
9 (x) Escrow charges in addition to any paid under subdivision
10 (a).
11 (xi) Title insurance premiums.
12 (xii) Fire and hazard insurance and flood insurance premiums,
13 if the conditions in 12 CFR 226.4(d)(2) are met.

14 Sec. 4. ~~—(1) A person offering to make or making a mortgage~~
15 ~~loan shall not do either of the following:~~

16 ~~—— (a) Charge a fee for a product or service if the product or~~
17 ~~service is not actually provided to the customer.~~

18 ~~—— (b) Misrepresent the amount charged by or paid to a third~~
19 ~~party for a product or service.~~

20 ~~—— (2) A lender in making a mortgage loan shall not finance as~~
21 ~~part of the loan single premium coverage for any credit life,~~
22 ~~credit disability, or credit unemployment.~~

23 ~~—— (3) A person, appraiser, or real estate agent shall not make,~~
24 ~~directly or indirectly, any false, deceptive, or misleading~~
25 ~~statement or representation in connection with a mortgage loan~~
26 ~~including, but not limited to, the borrower's ability to qualify~~
27 ~~for a mortgage loan or the value of the dwelling that will secure~~

1 ~~repayment of the mortgage loan.~~

2 ~~—— (4) A lender shall not insert or change information on an~~
3 ~~application for a mortgage loan if the lender knows that the~~
4 ~~information is false and misleading and intended to deceive a~~
5 ~~third party that the borrower is qualified for the loan when in~~
6 ~~fact the third party would not approve the loan without the~~
7 ~~insertion or change.~~

8 ~~—— (5) A statement or representation is deceptive or misleading~~
9 ~~if it has the capacity to deceive or mislead a borrower or~~
10 ~~potential borrower. The commissioner shall consider any of the~~
11 ~~following factors in deciding whether a statement or~~
12 ~~misrepresentation is deceptive or misleading:~~

13 ~~—— (a) The overall impression that the statement or~~
14 ~~representation reasonably creates.~~

15 ~~—— (b) The particular type of audience to which the statement is~~
16 ~~directed.~~

17 ~~—— (c) Whether it may be reasonably comprehended by the segment~~
18 ~~of the public to which the statement is directed.~~

19 ~~—— (6) A lender shall not condition the payment of an appraisal~~
20 ~~upon a predetermined value or the closing of the mortgage loan~~
21 ~~which is the basis of the appraisal.~~

22 ~~—— (7) A person shall not directly or indirectly compensate,~~
23 ~~coerce, or intimidate an appraiser for the purpose of influencing~~
24 ~~the independent judgment of the appraiser with respect to the~~
25 ~~value of the dwelling offered as security for repayment of the~~
26 ~~mortgage loan.~~

27 ~~—— (8) A mortgage loan note shall not contain blanks regarding~~

1 ~~payments, interest rates, maturity date, or amount borrowed to be~~
2 ~~filled in after the note is signed by the borrower.~~

3 (1) A creditor making a home loan shall not directly or
4 indirectly finance any credit life, credit disability, credit
5 unemployment, or credit property insurance, any other life or
6 health insurance, or any payments directly or indirectly for any
7 debt cancellation or suspension agreement or contract. However,
8 insurance premiums or debt cancellation or suspension fees
9 calculated and paid on a monthly basis are not considered
10 financed by the creditor.

11 (2) A creditor shall not engage in flipping a home loan. As
12 used in this subsection, "flipping" means making a home loan to a
13 borrower that refinances an existing home loan when the new loan
14 does not have reasonable, tangible net benefit to the borrower
15 considering all of the circumstances, including, but not limited
16 to, the terms of both the new and refinanced loans, the cost of
17 the new loan, and the borrower's circumstances.

18 (3) A creditor shall not recommend or encourage default on an
19 existing loan or other debt prior to and in connection with the
20 closing or planned closing of a home loan that refinances all or
21 any portion of that existing loan or debt.

22 (4) A creditor or servicer shall not do any of the
23 following:

24 (a) Charge a borrower a late payment fee unless the loan
25 documents specifically authorize the fee, the fee is not imposed
26 unless the payment is past due for 10 days or more, and the fee
27 does not exceed 5% of the amount of the late payment.

1 (b) Charge more than 1 late payment fee with respect to any
2 single late payment.

3 (c) Charge a late payment fee for a default on a loan payment
4 if the default is the result of the creditor or servicer
5 deducting a late payment fee from a previous payment made on the
6 home loan. However, a creditor or servicer may apply any payment
7 made to any unpaid balances of payments due in the order of
8 maturity, even if the result is a late payment charge accruing on
9 1 or more subsequent unpaid balances.

10 (5) A home loan may not contain a provision that permits the
11 creditor, in its sole discretion, to accelerate the
12 indebtedness. This subsection does not prohibit acceleration of
13 the loan in good faith due to the borrower's failure to abide by
14 the material terms of the loan.

15 (6) A lender shall not charge a fee for informing or
16 transmitting to any person the balance due to pay off a home loan
17 or to provide a release upon prepayment. A lender shall provide
18 a payoff balance within a reasonable time or within 7 business
19 days after the request, whichever is earlier.

20 Sec. 5. ~~A mortgage loan with a term of less than 5 years~~
21 ~~shall not have a payment schedule with regular periodic payments~~
22 ~~that when aggregated do not fully amortize the outstanding~~
23 ~~principal balance. This section does not apply to loans with~~
24 ~~maturities of less than 1 year, if the purpose of the loan is a~~
25 ~~"bridge" loan connected with the acquisition or construction of a~~
26 ~~dwelling intended to become the borrower's principal dwelling.~~
27 In addition to the requirements of this act, a high-cost home

1 loan is subject to the following additional limitations and
2 prohibited practices:

3 (a) A creditor or originator shall not directly or indirectly
4 finance any points or fees in connection with a high-cost home
5 loan.

6 (b) A creditor or originator shall not include in the loan
7 documents for a high-cost home loan or charge a borrower in a
8 high-cost home loan any prepayment fees or penalties.

9 (c) A high-cost home loan shall not contain a scheduled
10 payment that is more than twice as large as the average of
11 earlier scheduled payments. This subdivision does not apply when
12 the payment schedule is adjusted to the seasonal or irregular
13 income of the borrower.

14 (d) A high-cost home loan shall not include payment terms
15 under which the outstanding principal balance or accrued interest
16 will increase at any time over the course of the loan because the
17 regularly scheduled periodic payments do not cover the full
18 amount of interest due.

19 (e) A high-cost home loan shall not contain a provision that
20 increases the interest rate after default. This subdivision does
21 not apply to interest rate changes in a variable rate loan
22 otherwise consistent with the provisions of the loan documents,
23 if the change in the interest rate is not triggered by the event
24 of default or the acceleration of the indebtedness.

25 (f) A high-cost home loan shall not include terms under which
26 more than 2 periodic payments required under the loan are
27 consolidated and paid in advance from the loan proceeds provided

1 to the borrower.

2 (g) A creditor shall not make a high-cost home loan without
3 first receiving certification from a counselor from an
4 independent nonprofit organization approved by the United States
5 department of housing and urban development, a state housing
6 financing agency, or the regulatory agency that has jurisdiction
7 over the creditor, that the borrower has received counseling on
8 the advisability of the loan transaction.

9 (h) A creditor shall not extend a high-cost home loan to a
10 borrower residing in a home unless a reasonable creditor would
11 believe at the time the loan is closed that the borrower will be
12 able to make the scheduled payments associated with the loan
13 based upon a consideration of his or her current and expected
14 income, current obligations, employment status, and other
15 financial resources other than the borrower's equity in the
16 collateral that secures repayment of the loan. There is a
17 rebuttable presumption that a borrower residing in a home is able
18 to make the scheduled payments associated with a high-cost home
19 loan if at the time the loan is consummated the borrower's total
20 monthly debts, including amounts under the loan, do not exceed
21 50% of the borrower's monthly gross income as verified by tax
22 returns, payroll receipts, and other independent income
23 verification.

24 (i) A creditor shall not pay a contractor under a
25 home-improvement contract from the proceeds of a high-cost home
26 loan, unless both of the following are met:

27 (i) The creditor is presented with a signed and dated

1 completion certificate showing that the home improvements have
2 been completed.

3 (ii) The instrument is payable to the borrower or jointly to
4 the borrower and the contractor or, at the election of the
5 borrower, through a third-party escrow agent in accordance with
6 terms established in a written agreement signed by the borrower,
7 the creditor, and the contractor before the disbursement.

8 (j) A creditor shall not charge a borrower a fee or other
9 amount to modify, renew, extend, or amend a high-cost home loan
10 or to defer any payment due under the terms of a high-cost home
11 loan.

12 (k) A high-cost home loan document that creates a debt or an
13 interest in property to secure a debt shall include the following
14 notice on the face of the document, printed prominently in at
15 least _____-point boldfaced type:

16 "Notice: This is a high-cost home loan subject to special
17 rules under state law. A purchaser or assignee of this
18 high-cost home loan may be liable for all claims and
19 defenses of the borrower with respect to the home loan."

20 Sec. 8. ~~The commissioner may conduct examinations and~~
21 ~~investigations of a person over whom the commissioner has~~
22 ~~regulatory authority as necessary to determine whether the person~~
23 ~~is brokering, making, servicing, or collecting mortgage loans as~~
24 ~~required by this act.~~

25 (1) If a creditor or servicer asserts that grounds for
26 acceleration exist and requires the payment in full of all sums
27 secured by the security instrument, the borrower, or anyone

1 authorized to act on the borrower's behalf, has the right at any
2 time up to the time title is transferred by means of foreclosure
3 by judicial proceeding and sale or otherwise to cure the default,
4 and reinstate the home loan by tendering the amount or
5 performance specified in this section. A cure of default under
6 this section reinstates the borrower to the same position as if
7 the default had not occurred and nullifies any acceleration of
8 any obligation under the security instrument or note arising from
9 the default as of the date of the cure.

10 (2) Before a foreclosure or other legal action is filed to
11 foreclose on a loan subject to this act, the person who intends
12 to file the action shall deliver a notice of the right to cure
13 the default to the borrower informing the borrower of all of the
14 following:

15 (a) The nature of default claimed on the home loan, and of
16 the borrower's right to cure the default by paying the sum of
17 money required to cure the default. A creditor or servicer shall
18 accept any partial payment made or tendered in response to the
19 notice. If the amount necessary to cure the default will change
20 during the 30-day period after the effective date of the notice,
21 due to the application of a daily interest rate or the addition
22 of any late fees allowed under this act, the notice shall give
23 sufficient information to enable the borrower to calculate the
24 amount at any point during the 30-day period.

25 (b) The date by which the borrower must cure the default to
26 avoid acceleration and initiation of foreclosure, or other action
27 to seize the home, that is 30 days or more after the date the

1 notice is effective, and the name, address, and telephone number
2 of a person to whom the borrower may make payment or tender.

3 (c) That if the borrower does not cure the default by the
4 date specified, the creditor may take steps to terminate the
5 borrower's ownership in the property by requiring payment in full
6 of the home loan and commencing a foreclosure proceeding or other
7 action to seize the home.

8 (d) The name and address of the creditor or servicer and the
9 telephone number of a representative of the creditor or servicer
10 whom the borrower may contact if the borrower disagrees with the
11 assertion that a default has occurred or the correctness of the
12 creditor's calculation of the amount required to cure the
13 default.

14 (3) To cure a default described in this section, a borrower
15 is not required to pay any charge, fee, or penalty attributable
16 to the exercise of the right to cure a default under this
17 section, other than the fees specifically allowed by this
18 section. The borrower is not liable for any attorney fees
19 relating to the borrower's default that are incurred by the
20 creditor or servicer before the 30-day period in subsection
21 (2)(b). After the creditor or servicer files a foreclosure
22 action or takes other action to seize or transfer ownership of
23 the home, the borrower is only liable for attorney fees that are
24 reasonable and actually incurred by the creditor or servicer,
25 based on a reasonable hourly rate and a reasonable number of
26 hours.

27 (4) If a default is cured after the initiation of any action

1 to foreclose, the creditor shall take the steps necessary to
2 terminate the foreclosure proceeding or other action.

3 Sec. 9. ~~If the commissioner determines that a person is~~
4 ~~brokering, making, servicing, or collecting mortgage loans in~~
5 ~~violation of this act, the commissioner shall do 1 or more of the~~
6 ~~following:~~

7 ~~—— (a) Initiate a cause of action under section 10.~~

8 ~~—— (b) If the person is chartered, licensed, registered,~~
9 ~~regulated, or administered by the commissioner under a law of~~
10 ~~this state, the commissioner shall enforce the penalties and~~
11 ~~remedies under that law.~~

12 ~~—— (c) Forward a complaint to the appropriate regulatory or~~
13 ~~investigatory authority.~~

14 (1) A person who purchases or is otherwise assigned a
15 high-cost home loan is subject to any claims and defenses with
16 respect to the loan that the borrower could assert against a
17 creditor or mortgage broker of the loan, unless the purchaser or
18 assignee demonstrates by a preponderance of the evidence that all
19 of the following are met:

20 (a) The purchaser or assignee has in place at the time of the
21 purchase or assignment of the loan a policy that expressly
22 prohibits its purchase or acceptance of assignment of any
23 high-cost home loans.

24 (b) The purchaser or assignee requires by contract that a
25 seller or assignor of home loans to the purchaser or assignee
26 represents and warrants to the purchaser or assignee that either
27 the seller or assignor will not sell or assign any high-cost home

1 loans to the purchaser or assignee, or that the seller or
2 assignor is a beneficiary of a representation and warranty from a
3 previous seller or assignor to that effect.

4 (c) The purchaser or assignee exercises reasonable due
5 diligence at the time of purchase or assignment of any home
6 loans, or within a reasonable period of time after the purchase
7 or assignment of any home loans, intended by the purchaser or
8 assignee to prevent the purchaser or assignee from purchasing or
9 taking assignment of any high-cost home loans. As used in this
10 subdivision, "reasonable due diligence" includes sampling and
11 does not include loan-by-loan review.

12 (2) Limited to amounts required to reduce or extinguish the
13 borrower's liability under the high-cost home loan plus amounts
14 required to recover costs, including reasonable attorney fees, a
15 borrower acting only in an individual capacity may assert claims
16 that the borrower could assert against a creditor of the
17 high-cost home loan against any subsequent holder or assignee of
18 the high-cost home loan under either or both of the following, as
19 applicable:

20 (a) Within 5 years of the closing of a high-cost home loan, a
21 violation of this act in connection with the loan as an original
22 action.

23 (b) At any time during the term of a high-cost home loan,
24 after an action to collect on the home loan or foreclose on the
25 collateral securing the home loan has been initiated or the debt
26 arising from the home loan has been accelerated or the home loan
27 has become 60 days in default, any defense, claim, or

1 counterclaim or action to enjoin foreclosure or preserve or
 2 obtain possession of the home that secures the loan.

3 (3) The provisions of this section shall be effective
 4 notwithstanding any other provision of law, provided that nothing
 5 in this section shall be construed to limit the substantive
 6 rights, remedies, or procedural rights available to a borrower
 7 against any creditor, assignee, or holder under any other law.
 8 The rights conferred on borrowers by subsections (1) and (2) are
 9 independent of each other and do not limit each other.

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

13 ~~—— (a) Obtain a declaratory judgment that a method, act, or~~
 14 ~~practice of the person is a violation of this act.~~

15 ~~—— (b) Enjoin a person who is engaging or about to engage in a~~
 16 ~~method, act, or practice that is a violation of this act.~~

17 ~~—— (c) Obtain a civil fine of not more than \$10,000.00 for the~~
 18 ~~first offense and not more than \$20,000.00 for the second and any~~
 19 ~~subsequent offense.~~

20 (1) A violation of this act is an unfair and deceptive trade
 21 practice and a violation of section 3 of the Michigan consumer
 22 protection act, 2002 PA 613, MCL 445.903. However, a borrower
 23 may not recover damages under both that act and subsection (2).

24 (2) If a person is found in a civil action to have violated
 25 this act, the court may award the borrower all of the following:

26 (a) Actual damages, including consequential and incidental
 27 damages. A borrower is not required to demonstrate reliance in

1 order to receive actual damages.

2 (b) Statutory damages equal to 1 of the following:

3 (i) If the violation is committed by a mortgage broker or
4 originator, 2 times the finance charge paid by the borrower under
5 the loan and forfeiture of the remaining interest under the
6 loan.

7 (ii) If the violation is committed by a mortgage servicer,
8 \$5,000.00 per violation.

9 (c) If the violation was malicious or reckless, punitive
10 damages.

11 (d) Costs and reasonable attorney fees.

12 (3) A court may grant a borrower injunctive, declaratory, and
13 any other equitable relief the court finds appropriate in an
14 action to enforce compliance with this act.

15 (4) The right of rescission granted under the truth in
16 lending act, 15 USC 1601 to 1667f, for a violation of that law
17 and all other remedies provided under this act are available to a
18 borrower by way of recoupment against a party foreclosing on the
19 home loan or collecting on the loan, at any time during the term
20 of the loan. A recoupment claim asserted by a borrower under
21 this subsection is limited to an amount that reduces or
22 extinguishes the borrower's liability under the home loan, plus
23 costs and reasonable attorney fees. This subsection does not
24 limit any recoupment right available to a borrower under any
25 other law.

26 (5) A person, including a member, officer, or director of a
27 creditor, who knowingly violates this act or an order or rule

1 made or promulgated under this act is guilty of a misdemeanor
2 punishable by 1 of the following:

3 (a) For a first violation, imprisonment for not more than 180
4 days, a fine of not more than \$5,000.00, or community service of
5 not more than 500 hours, or a combination of these penalties.

6 (b) For a second or subsequent violation, imprisonment for
7 not more than 1 year, a fine of not more than \$10,000.00, or
8 community service of not more than 1,000 hours, or a combination
9 of these penalties.

10 (6) A creditor in a home loan who, when acting in good faith,
11 fails to comply with the provisions of this act, is not in
12 violation of this section if the creditor establishes either of
13 the following:

14 (a) Within 30 days of the loan closing, and before receiving
15 any notice of the compliance failure, the creditor made
16 appropriate restitution to the borrower and appropriate
17 adjustments to the loan.

18 (b) Within 60 days of the loan closing and before receiving
19 any notice of the compliance failure, and the compliance failure
20 was not intentional and resulted from a bona fide error
21 notwithstanding the maintenance of procedures reasonably adapted
22 to avoid those errors, the borrower is notified of the compliance
23 failure, appropriate restitution is made to the borrower, and
24 appropriate adjustments are made to the loan. As used in this
25 subsection, a "bona fide error" includes, but is not limited to,
26 a computer malfunction or a clerical, calculation, computer
27 programming, or printing error. An error of legal judgment with

1 respect to a person's obligations under this section is not a
2 bona fide error.

3 (7) The remedies provided in this section are cumulative and
4 are not the exclusive remedies available to a borrower. A
5 borrower is not required to exhaust any administrative remedies
6 provided under this act or any other applicable law before
7 proceeding under this section.

8 (8) A provision in an agreement for a high-cost home loan
9 that allows a person to require a borrower, individually or on
10 behalf of similarly situated borrowers, to assert any legal claim
11 or defense in a forum located outside of this state or limits in
12 any way a claim or defense the borrower may have is void and
13 unenforceable.

14 (9) A person shall not attempt in bad faith to avoid the
15 application of this act by dividing any home loan transaction
16 into separate parts, structure a home loan transaction as an
17 open-end loan for the purpose of evading this act if the loan
18 would have been a high-cost home loan if the loan had been
19 structured as a closed-end loan, or engage in any other
20 subterfuge with the intent of evading this act.

21 Sec. 12. ~~This act does not limit the authority of the~~
22 ~~commissioner, the attorney general, or a county prosecutor to~~
23 ~~enforce any law under which a person is chartered, organized,~~
24 ~~licensed, registered, regulated, or otherwise authorized to do~~
25 ~~business in this state.~~ The rights conferred by this act are
26 independent of and in addition to any other rights under other
27 laws.

1 Sec. 15. ~~-(1) The laws of this state relating to the~~
2 ~~brokering, making, servicing, and collecting of mortgage loans~~
3 ~~prescribe rules of conduct upon citizens generally, comprise a~~
4 ~~comprehensive regulatory framework intended to operate uniformly~~
5 ~~throughout the state under the same circumstances and conditions,~~
6 ~~and constitute general laws of this state.~~

7 ~~—— (2) Silence in the statutes of this state with respect to any~~
8 ~~act or practice in the brokering, making, servicing, or~~
9 ~~collecting of mortgage loans shall not be interpreted to mean~~
10 ~~that the state has not completely occupied the field or has only~~
11 ~~set minimum standards in its regulation of brokering, making,~~
12 ~~servicing, or collecting of mortgage loans.~~

13 ~~—— (3) It is the intent of the legislature to entirely preempt~~
14 ~~municipal corporations and other political subdivisions from the~~
15 ~~regulation and licensing of persons engaged in the brokering,~~
16 ~~making, servicing, or collecting of mortgage loans in this~~
17 ~~state. **This act applies to any transaction involving real**~~
18 ~~**property located in this state.**~~

19 Enacting section 1. Sections 3, 6, 7, 11, 13, and 14 of the
20 consumer mortgage protection act, 2002 PA 660, MCL 445.1633,
21 445.1636, 445.1637, 445.1641, 445.1643, and 445.1644, are
22 repealed.