

SENATE BILL No. 773

October 23, 2001, Introduced by Senators LELAND, PETERS, EMERSON, HART, KOIVISTO, CHERRY, SCOTT, DINGELL, SMITH, DE BEAUSSAERT and MILLER and referred to the Committee on Banking and Financial Institutions.

A bill to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; and to prescribe penalties and provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan predatory lending practices act".

3 Sec. 2. As used in this act:

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

6 (b) "Annual percentage rate" means the annual percentage
7 rate for the loan calculated according to the federal truth in
8 lending act.

1 (c) "Federal truth in lending act" means the truth in
2 lending act, title I of the consumer credit protection act,
3 Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615,
4 1631 to 1635, 1637 to 1649, and 1661 to 1667f.

5 (d) "High-cost home loan" means a home loan in which the
6 terms of the loan meet 1 of the following:

7 (i) The annual percentage rate of the home loan exceeds by
8 6.5 or more percentage points the weekly average yield on United
9 States treasury securities adjusted to a constant maturity of 5
10 years as of the week immediately preceding the week in which the
11 interest rate for the loan is established.

12 (ii) The total points and fees exceed 3% of the total loan
13 amount if the total loan amount is \$20,000.00 or more.

14 (iii) The total points and fees exceed the lesser of 5% of
15 the total loan amount or \$800.00, if the total loan amount is
16 less than \$20,000.00.

17 (e) "Home loan" means a loan, other than a reverse mortgage
18 transaction, where all of the following apply:

19 (i) The principal amount of the loan does not exceed the
20 conforming loan size limit for a single-family dwelling as estab-
21 lished from time to time by the federal national mortgage
22 association.

23 (ii) The borrower is a natural person.

24 (iii) The debt is incurred by the borrower primarily for
25 personal, family, or household purposes.

26 (iv) The loan is secured by a mortgage or similar instrument
27 on real estate upon which there is located or there is to be

1 located a structure or structures designed principally for
2 occupancy of from 1 to 4 families and which is or will be occu-
3 pied by the borrower as the borrower's principal dwelling.

4 (f) "Introductory rate" means an annual percentage rate of
5 interest which is less than the annual percentage rate of inter-
6 est which will apply to the loan after the end of an initial or
7 introductory period.

8 (g) "Lender" means any entity which originated more than 5
9 home loans within the past 12-month period or acted as an inter-
10 mediary between originators and borrowers on more than 5 home
11 loans within the past 12-month period.

12 (h) "Obligor" means a borrower, coborrower, cosigner, or
13 guarantor obligated to repay a home loan.

14 (i) "Points and fees" includes all of the following:

15 (i) All items required to be disclosed under the federal
16 truth in lending act, except interest or the time-price
17 differential.

18 (ii) All charges for items listed under the federal truth in
19 lending act, but only if the lender receives direct or indirect
20 compensation in connection with the charge or the charge is paid
21 to an affiliate of the lender.

22 (iii) All compensation paid directly or indirectly to a
23 mortgage broker.

24 (iv) All costs of premiums financed by the lender, directly
25 or indirectly, for credit life, credit disability, credit unem-
26 ployment, credit property insurance, or any other life or health
27 insurance or any payments financed by the lender, directly or

1 indirectly, for any debt cancellation or suspension agreement or
2 contract. Insurance premiums calculated and paid on a monthly
3 basis are not considered financed by the lender.

4 (v) All prepayment fees or penalties which are charged the
5 borrower if the loan refinances a previous loan made by the same
6 lender or an affiliate of the lender.

7 (j) "Points and fees" shall not include either of the
8 following:

9 (i) Taxes, filing fees, recording, and other charges and
10 fees paid for determining the existence of or for perfecting,
11 releasing, or satisfying a security interest.

12 (ii) Fees paid to a person other than a lender or an affili-
13 ate of the lender or to the mortgage broker or an affiliate of
14 the mortgage broker for flood certification, pest infestation and
15 flood determinations, appraisal inspections performed before
16 closing, credit reports, surveys, attorney fees, notary fees,
17 escrow charges, title insurance premiums, and fire and flood
18 insurance premiums.

19 Sec. 3. (1) A home loan shall not contain a prepayment fee
20 penalty.

21 (2) A lender shall not recommend or encourage nonpayment on
22 an existing loan or other debt before or in connection with the
23 closing of a home loan that refinances all or any portion of the
24 existing loan or debt.

25 (3) A lender shall not charge a fee for a product or service
26 where the product or service is not actually provided, or

1 misrepresent the amount charged by or paid to a third party for a
2 product or service.

3 (4) A lender, appraiser, or real estate agent shall not make
4 or cause to be made, directly or indirectly, any false, decep-
5 tive, or misleading statement or representation in connection
6 with a home loan including, without limitation, a false, decep-
7 tive, or misleading statement or representation regarding the
8 borrower's ability to qualify for any mortgage product, or
9 regarding the value of the dwelling.

10 (5) A statement or representation is deceptive or misleading
11 if it has the capacity to deceive or mislead a borrower or poten-
12 tial borrower. The commissioner shall consider the following
13 factors in deciding whether a statement or representation is
14 deceptive or misleading:

15 (a) The overall impression that the statement or representa-
16 tion reasonably creates.

17 (b) The particular type of audience to which the statement
18 is directed.

19 (c) Whether it may be reasonably comprehended by the segment
20 of the public to which the statement is directed.

21 (6) A lender shall not directly or indirectly compensate,
22 coerce, or intimidate an appraiser for the purpose of influencing
23 the independent judgment of the appraiser with respect to the
24 value of real estate covered by a home loan or is being offered
25 as security according to an application for a home loan.

26 (7) A lender shall not require or allow either of the
27 following:

1 (a) The advance collection of a premium, on a single premium
2 basis, for any credit life, credit disability, credit unemploy-
3 ment, or credit property insurance, and any analogous product.

4 (b) The advance collection of a fee for any debt cancella-
5 tion or suspension agreement or contract, in connection with any
6 home loan, whether the premium or fee is paid directly by the
7 borrower or is financed by the borrower through the loan.

8 (8) A lender shall not charge a fee for informing any person
9 of the balance due to pay off a home loan.

10 (9) A lender making a home loan shall not finance, directly
11 or indirectly, any credit life, credit disability, credit proper-
12 ty, credit unemployment insurance, or any other life or health
13 insurance premiums or any debt cancellation or suspension agree-
14 ment or contract fees. Insurance premiums or debt cancellation
15 or suspension fees calculated and paid on a monthly basis shall
16 not be considered financed by the lender.

17 (10) A home loan document in which blanks are left to be
18 filled in after the contract is signed by the borrower is not
19 enforceable under the law.

20 (11) If the discussions between the lender and the borrower
21 on a home loan are conducted primarily in a language other than
22 English, the lender shall, before closing, provide an additional
23 copy of all information required to be disclosed to the borrower
24 under the federal truth in lending act, translated into the lan-
25 guage in which the discussions were conducted.

26 (12) A lender may charge a fee for a late payment of an
27 installment on a home loan if the fee does not exceed 5% of the

1 amount due and the fee is not assessed more than once for any
2 single installment.

3 Sec. 4. (1) A high-cost home loan is subject to the
4 requirements of section 3.

5 (2) A lender shall not make a high-cost home loan without
6 first receiving certification from a counselor approved by the
7 United States department of housing and urban development, a
8 state housing financing agency, or the office of financial and
9 insurance services that the borrower has received counseling on
10 the advisability of the loan transaction and the appropriate loan
11 for the borrower.

12 (3) The following discount points shall not be included in
13 the calculation of total points and fees in determining if a loan
14 is a high-cost home loan:

15 (a) Up to 2 discount points payable by the borrower if the
16 interest rate to be discounted does not exceed by more than 1
17 percentage point the required net yield for a 90-day standard
18 mandatory delivery commitment for a reasonably comparable loan
19 from either the federal national mortgage association or the fed-
20 eral home loan mortgage corporation, whichever is greater.

21 (b) Up to 1 discount point payable by the borrower if the
22 interest rate to be discounted does not exceed by more than 2
23 percentage points the required net yield for a 90-day standard
24 mandatory delivery commitment for a reasonably comparable loan
25 from either the federal national mortgage association or the fed-
26 eral home loan mortgage corporation, whichever is greater.

1 Sec. 5. (1) A high-cost home loan shall not include any
2 prepayment fees or penalties.

3 (2) A high-cost home loan shall not contain a scheduled pay-
4 ment that is more than twice as large as the average of earlier
5 scheduled payments. This subsection does not apply when the pay-
6 ment schedule is adjusted to the seasonal or irregular income of
7 the borrower.

8 (3) A high-cost home loan shall not include terms under
9 which more than 2 periodic payments required under the loan are
10 consolidated and paid in advance from the loan proceeds provided
11 to the borrower.

12 (4) A lender shall not finance, directly or indirectly, any
13 of the following:

14 (a) Points and fees.

15 (b) Fees or charges payable to third parties.

16 (c) Fees or charges required to refinance an existing
17 high-cost home loan if the lender, or any affiliate of the
18 lender, is also the lender of the existing loan.

19 (5) A lender shall not knowingly refinance an existing home
20 loan with a high-cost home loan when the new loan does not have a
21 reasonable, tangible net benefit to the borrower including, but
22 not limited to, the terms of the new loan, the cost of the new
23 loan, and the borrower's circumstances. A tangible net benefit
24 under this subsection shall require more than a reduction in the
25 borrower's monthly payment.

26 (6) A lender shall not make a home loan unless the lender
27 reasonably believes that 1 or more of the borrowers, when

1 considered individually or collectively, will be able to make the
2 scheduled payments to repay the obligation based upon a consider-
3 ation of their current and expected income, current obligations,
4 employment status, and other financial resources. A borrower is
5 presumed to be able to make the scheduled payments to repay the
6 obligation if the borrower's total monthly debts, including
7 amounts owed under the loan, do not exceed 50% of the borrower's
8 monthly gross income as verified by the credit application, the
9 borrower's financial statement, a credit report, financial infor-
10 mation provided to the lender by or on behalf of the borrower, or
11 any other reasonable means. A presumption of inability to make
12 the scheduled payments to repay the obligation does not arise
13 solely from the fact that the borrower's total monthly debts
14 exceed 50% of the borrower's monthly gross income.

15 (7) A high-cost home loan shall not contain a provision that
16 permits the lender, in its sole discretion, to accelerate the
17 indebtedness. This subsection does not apply when repayment of
18 the loan has been accelerated by default, under a due-on-sale
19 clause.

20 (8) A lender shall not charge a borrower any fees or other
21 charges to modify, renew, extend, or amend a high-cost home loan
22 or to defer any payment due under the terms of a high-cost home
23 loan.

24 (9) A high-cost home loan shall not be subject to a manda-
25 tory arbitration clause that limits in any way the right of the
26 borrower to seek relief through the judicial process.

1 (10) A lender shall not pay a contractor under a home
2 improvement contract from the proceeds of a high-cost home loan
3 unless the lender is presented with a signed and dated completion
4 certificate showing that the home improvement has been completed
5 and payment is made by 1 of the following means:

6 (a) By an instrument payable to the borrower or payable
7 jointly to the borrower and the contractor.

8 (b) At the election of the borrower, through a third-party
9 escrow agent in accordance with the terms established in a writ-
10 ten agreement between the borrower, the lender, and the contrac-
11 tor that was signed before any funds were disbursed.

12 (11) A high-cost home loan shall not contain a payment
13 schedule with regular periodic payments that result in an
14 increase in the principal balance, otherwise known as negative
15 amortization.

16 (12) A high-cost home loan shall not contain a provision
17 that increases the interest rate after default. This subsection
18 does not apply to interest rate changes in a variable rate loan
19 otherwise consistent with the provisions of the loan documents,
20 provided the change in the interest rate is not triggered by the
21 event of default or the acceleration of the indebtedness.

22 Sec. 6. (1) A lender of a high-cost home loan shall provide
23 the borrower, at least 3 days before closing, clear written and
24 oral disclosure of all of the following information:

25 (a) The amount of the borrower's monthly payments.

26 (b) Whether the loan has a variable rate feature and, if so,
27 how the variable rate might affect future monthly payments,

1 including specific notification of what the fully indexed
2 interest rate of the loan would be at the present rate of the
3 index.

4 (c) Loan fees being paid by the borrower.

5 (d) Information regarding any payments being made to third
6 party creditors from the loan proceeds.

7 (2) A lender shall not sell or otherwise assign a high-cost
8 home loan without furnishing the following statement to the pur-
9 chaser or assignee:

10 "NOTICE: THIS IS A HOME LOAN SUBJECT TO SPECIAL RULES AND
11 CONDITIONS AS REQUIRED BY LAW. PURCHASERS OR ASSIGNEES OF
12 THIS LOAN COULD BE LIABLE FOR ALL CLAIMS AND DEFENSES WITH
13 RESPECT TO THE MORTGAGE THAT THE BORROWER COULD ASSERT
14 AGAINST THE CREDITOR.".

15 Sec. 7. (1) A lender in a high-cost home loan who, when
16 acting in good faith, fails to comply with section 5 will not be
17 considered to have violated this act if the lender establishes
18 either of the following:

19 (a) Within 30 days of the loan closing and before the insti-
20 tution of any action under this section, the borrower is notified
21 of the compliance failure, appropriate restitution is made, and 1
22 of the following adjustments is made to the loan at the choice of
23 the borrower:

24 (i) Make the high-cost home loan satisfy the requirements of
25 section 5.

1 (ii) Change the terms of the loan in a manner beneficial to
2 the borrower so that the loan will no longer be considered a
3 high-cost home loan subject to this act.

4 (b) The compliance failure was not intentional and resulted
5 from a bona fide error notwithstanding the maintenance of proce-
6 dures reasonably adapted to avoid such errors, and within 60 days
7 after the discovery of the compliance failure and before the
8 institution of any action under this act or the receipt of writ-
9 ten notice of the compliance failure, the borrower is notified of
10 the compliance failure, appropriate restitution is made, and 1 of
11 the following adjustments is made to the loan at the choice of
12 the borrower:

13 (i) Make the high-cost home loan satisfy the requirements of
14 section 5.

15 (ii) Change the terms of the loan in a manner beneficial to
16 the borrower so that the loan will no longer be considered a
17 high-cost home loan subject to this act.

18 (2) Examples of a bona fide error under this section include
19 clerical, calculation, computer malfunction and programming, and
20 printing errors. An error of legal judgment with respect to a
21 person's obligations under this section is not a bona fide
22 error.

23 Sec. 8. (1) The attorney general, the commissioner of the
24 office of financial and insurance services, or any party to a
25 high-cost home loan may enforce this act. The consumer protec-
26 tions and remedies provided by this act are in addition to other

1 consumer protections and remedies that may otherwise be available
2 by law.

3 (2) A borrower prevailing in a claim under this act is enti-
4 tled to recover 1 or more of the following:

5 (a) Actual damages, including consequential and incidental
6 damages.

7 (b) Damages equal to the finance charges agreed to in the
8 home loan agreement, plus 10% of the amount financed.

9 (c) Reasonable costs and attorney fees.

10 Sec. 9. In addition to any other penalties or remedies pro-
11 vided by this act or law, a person that violates this act is
12 guilty of a misdemeanor punishable by imprisonment for not more
13 than 1 year or a fine of not more than \$10,000.00, or both.