

SUBSTITUTE FOR  
HOUSE BILL NO. 6615

A bill to require mortgage lenders and mortgage servicers to provide certain notices and information; to provide for the establishment of a program to prevent home foreclosures; to provide for the establishment of an information database; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the "home  
2 foreclosure prevention act".

3       Sec. 2. As used in this act:

4       (a) "Acts as a mortgage servicer" means engages, whether for  
5 compensation or gain from another or on its own behalf, in the  
6 business of receiving scheduled periodic payments from a borrower

1 pursuant to the terms of a mortgage loan, including money for an  
2 escrow account, and paying principal, interest, and other payments  
3 with respect to the money received from the borrower as is required  
4 under the mortgage loan, mortgage servicing loan documents, or  
5 servicing contract.

6 (b) "Commissioner" means the commissioner of the office of  
7 financial and insurance regulation.

8 (c) "Mortgage lender" means a person engaged in the business  
9 of making mortgage loans for compensation or gain and a mortgage  
10 lender as that term is defined in section 1a of the mortgage  
11 brokers, lenders, and servicers licensing act, 1987 PA 173, MCL  
12 445.1651a.

13 (d) "Mortgage loan" means a loan secured by a first or  
14 subordinate mortgage of or a land contract for the purchase of real  
15 property located in this state, used or improved for use as a  
16 principal dwelling or primary residence, and designed for occupancy  
17 by 4 or fewer families.

18 (e) "Mortgage servicer" means a person who directly or  
19 indirectly acts as a mortgage servicer, who is a servicer, as that  
20 term is defined in 12 USC 2605, with respect to mortgage loans, or  
21 who is a mortgage servicer as that term is defined in section 1a of  
22 the mortgage brokers, lenders, and servicers licensing act, 1987 PA  
23 173, MCL 445.1651a.

24 (f) "Subprime loan" means a mortgage loan originated after  
25 December 31, 2004 and before January 1, 2009 to which both of the  
26 following apply:

27 (i) The difference between the annual percentage rate for the

1 loan and the yield on United States treasury securities with  
2 comparable periods of maturity is either equal to or greater than 3  
3 percentage points if the loan is secured by a first lien mortgage  
4 or deed of trust or 5 percentage points if the loan is secured by a  
5 subordinate lien mortgage or deed of trust. Without regard to  
6 whether the loan is subject to or reportable under the home  
7 mortgage disclosure act of 1975, 12 USC 2801 to 2811, the  
8 difference between the annual percentage rate and the yield on  
9 treasury securities with comparable periods of maturity shall be  
10 determined using the same procedures and calculation methods  
11 applicable to loans that are subject to the reporting requirements  
12 of the home mortgage disclosure act of 1975, 12 USC 2801 to 2811,  
13 with the yield on treasury securities being determined as of the  
14 fifteenth day of the month before the application for the loan.

15 (ii) The difference between the annual percentage rate for the  
16 loan and the conventional mortgage rate is either equal to or  
17 greater than 1.75 percentage points if the loan is secured by a  
18 first lien mortgage or deed of trust or 3.75 percentage points if  
19 the loan is secured by a subordinate lien mortgage or deed of  
20 trust. As used in this subparagraph, "conventional mortgage rate"  
21 means the most recent daily contract interest rate on commitments  
22 for fixed-rate first mortgages published by the board of governors  
23 of the federal reserve system in the federal reserve statistical  
24 release H.15, or a publication that supersedes that release, during  
25 the week before the week in which the interest rate for the loan is  
26 set.

27 Sec. 3. (1) At least 45 days before filing a judicial

1 foreclosure action under chapter 31 of the revised judicature act  
2 of 1961, 1961 PA 236, MCL 600.3101 to 600.3185, or publishing a  
3 notice of foreclosure by advertisement under section 3208 of the  
4 revised judicature act of 1961, 1961 PA 236, MCL 600.3208, to  
5 foreclose a mortgage on a primary residence that secures a subprime  
6 loan, the mortgage servicer for the loan shall send written notice  
7 by mail to the last known address of the borrower to inform the  
8 borrower of the availability of resources to avoid foreclosure. The  
9 notice shall include all of the following:

10 (a) An itemization of all past due amounts that cause the loan  
11 to be in default.

12 (b) An itemization of any other charges that must be paid to  
13 bring the loan current.

14 (c) The earliest date that proceedings to foreclose the  
15 mortgage may be commenced.

16 (d) A statement that the borrower may have options available  
17 other than foreclosure and that the borrower may discuss available  
18 options with the mortgage lender, the mortgage servicer, or a  
19 counselor approved by the United States department of housing and  
20 urban development.

21 (e) The address, telephone number, and other contact  
22 information for the mortgage lender, the mortgage servicer, or the  
23 agent for either of them who is authorized to attempt to work with  
24 the borrower to avoid foreclosure.

25 (f) The name, address, telephone number, and other contact  
26 information for 1 or more counseling agencies approved by the  
27 United States department of housing and urban development or the

1 Michigan state housing development authority operating to assist  
2 borrowers in this state to avoid foreclosure.

3 (g) The address, telephone number, and other contact  
4 information for the consumer complaint section of the office of  
5 financial and insurance regulation.

6 (h) The telephone numbers of the state bar of Michigan's  
7 lawyer referral service and of a local legal aid office serving the  
8 area in which the property is located, and a statement that if the  
9 borrower cannot afford an attorney, he or she should contact the  
10 referral service or legal aid office.

11 (2) By the deadline for sending a notice under subsection (1),  
12 the mortgage servicer shall send a written notice to any occupants  
13 of the property. The notice under this subsection shall include all  
14 of the following:

15 (a) A statement informing the occupant of any available  
16 resources for a tenant to avoid foreclosure of property the tenant  
17 is leasing.

18 (b) A statement that if the occupant is a tenant, the occupant  
19 should seek legal counsel.

20 (c) The telephone numbers required under subsection (1)(h) and  
21 a statement that if the occupant cannot afford an attorney, he or  
22 she should contact the referral service or legal aid office.

23 Sec. 4. (1) Within 3 business days after mailing the notice  
24 required by section 3, the mortgage servicer shall file information  
25 with the state court administrative office. The filing shall be in  
26 an electronic format as designated by the state court  
27 administrative office and shall contain the name, address, and

1 telephone number of the borrower and the date the notice was mailed  
2 to the borrower.

3 (2) As permitted by applicable federal law and law of this  
4 state, optional information may be requested from a mortgage  
5 servicer to facilitate further review by the commissioner under the  
6 Michigan home foreclosure prevention program established under  
7 section 5. The nature of the optional information requested shall  
8 be determined in connection with the design of the database under  
9 subsection (3). The optional information shall be used by the  
10 commissioner to prioritize efforts to reach borrowers most likely  
11 to avoid foreclosure and to prevent delay for defaults where  
12 foreclosure is unavoidable.

13 (3) By January 1, 2009, the state court administrative office  
14 shall establish an internal database to track information required  
15 to be provided under this section. The commissioner shall design  
16 and develop this database, in consultation with the state court  
17 administrative office, in a manner to promote the Michigan home  
18 foreclosure prevention program established under section 5. Except  
19 as provided in section 8(2), only the state court administrative  
20 office and the commissioner or the commissioner's designee shall  
21 have access to the database.

22 Sec. 5. (1) The commissioner shall establish the Michigan home  
23 foreclosure prevention program to seek solutions to avoid  
24 foreclosures for certain subprime loans. In developing the program,  
25 the commissioner may seek input from any person, including housing  
26 counselors approved by the United States department of housing and  
27 urban development or the Michigan state housing development

1 authority, community organizations, state agencies, mortgage  
2 lenders, and mortgage servicers.

3 (2) The Michigan home foreclosure prevention program may  
4 provide for the mediation of foreclosure proceedings. If mediation  
5 is provided for by the Michigan home foreclosure prevention  
6 program, all of the following provisions shall be included:

7 (a) That mediation is nonbinding.

8 (b) That mediation shall be conducted by a designee of the  
9 commissioner, who may be a counselor identified under section  
10 3(1)(d).

11 (c) That the individual designated to conduct the mediation  
12 may terminate the mediation if the individual determines that there  
13 is unlikely to be a resolution to which both sides will agree.

14 (d) That if the borrower fails to appear for a scheduled  
15 mediation and if the commissioner determines that the borrower did  
16 not have good cause for the failure to appear, the commissioner may  
17 rescind the extension order under section 6.

18 (3) The Michigan home foreclosure prevention program  
19 established under this section shall provide that the commissioner  
20 may relieve a mortgage lender or mortgage servicer from  
21 participation in the Michigan home foreclosure prevention program  
22 if the mortgage lender or mortgage servicer can demonstrate to the  
23 commissioner that the mortgage lender or mortgage servicer has a  
24 system for establishing workouts for borrowers.

25 Sec. 6. The commissioner shall review information provided in  
26 the database created under section 4 to determine whether a  
27 subprime loan is appropriate for efforts to avoid foreclosure. If

1 the commissioner reasonably believes, based on a full review of the  
2 loan information, the mortgage lender's or mortgage servicer's loss  
3 mitigation efforts, the borrower's capacity and interest in staying  
4 in the home, and other appropriate factors, that efforts under the  
5 Michigan home foreclosure prevention program established under  
6 section 5 will offer a reasonable prospect to avoid foreclosure,  
7 the commissioner may do 1 or both of the following:

8 (a) Extend the earliest date to commence proceedings to  
9 foreclose the mortgage as contained in the notice under section 3  
10 for not more than 30 days. If the commissioner extends the date  
11 under this subdivision, the commissioner shall notify the borrower,  
12 mortgage servicer, and state court administrative office.

13 (b) Issue an order under the Michigan home foreclosure  
14 prevention program ordering the mortgage lender, the mortgage  
15 servicer, and the borrower to participate in mediation.

16 Sec. 7. Except as provided in sections 8(2) and 9, the data  
17 provided to the state court administrative office under section 4  
18 shall be used exclusively for the Michigan home foreclosure  
19 prevention program developed under section 5. The information  
20 provided to the database is not a public record and not subject to  
21 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,  
22 except that a mortgage lender or mortgage servicer shall have  
23 access to the information submitted with regard to the lender or  
24 servicer's own loans. Provision of information to the state court  
25 administrative office for use by the commissioner is not a  
26 violation of applicable law.

27 Sec. 8. (1) Until the Michigan home foreclosure prevention



1 program developed under section 4 is discontinued, a complaint to  
2 judicially foreclose a mortgage on a primary residence that secures  
3 a subprime loan filed after, or a notice to foreclose a mortgage on  
4 a primary residence that secures a subprime loan published after,  
5 December 14, 2008 shall contain a certification by the filer or  
6 publisher that all of the following are true:

7 (a) Notice was provided as required by section 3.

8 (b) Information was provided as required by section 4.

9 (c) The filing or publication date is on or after the earliest  
10 date to commence proceedings to foreclose the mortgage as contained  
11 in the notice under section 3 and, if applicable, as extended by  
12 the commissioner under section 6.

13 (2) A clerk of the circuit court, sheriff, deputy sheriff,  
14 undersheriff, or other judicial officer acting under chapter 31 of  
15 the revised judicature act of 1961, 1961 PA 236, MCL 600.3101 to  
16 600.3185, for judicial foreclosures or under section 3216 of the  
17 revised judicature act of 1961, 1961 PA 236, MCL 600.3216, for  
18 foreclosures by advertisement may access the database established  
19 under section 4 to confirm a certification provided under  
20 subsection (1).

21 (3) If a certification under subsection (1) in a complaint to  
22 foreclose a mortgage contains a materially inaccurate statement,  
23 the action may be dismissed without prejudice and the plaintiff  
24 ordered to pay costs incurred by the defendant in defending the  
25 action.

26 (4) If a certification under subsection (1) in a notice of  
27 foreclosure by advertisement contains a materially inaccurate

1 statement, the sale of the property under section 3216 of the  
2 revised judicature act of 1961, 1961 PA 236, MCL 600.3216, shall  
3 not be conducted until the party attempting to foreclose by  
4 advertisement has complied with this act.

5 Sec. 9. (1) The commissioner shall report annually to the  
6 standing committees of the house and senate with primary  
7 jurisdiction over banking and financial services matters on all of  
8 the following:

9 (a) The number of notices given to the state court  
10 administrative office under section 3.

11 (b) A summary of results obtained under the Michigan home  
12 foreclosure prevention program.

13 (c) A description of the Michigan home foreclosure prevention  
14 program.

15 (2) The duty to report under this section continues until 1  
16 year after the Michigan home foreclosure prevention program is  
17 discontinued.

18 Sec. 10. This act is repealed effective 2 years after the  
19 effective date of this act.

20 Enacting section 1. This act does not take effect unless House  
21 Bill No. 6614 of the 94th Legislature is enacted into law.