

# HOUSE BILL No. 4409

March 6, 2007, Introduced by Reps. Amos, Pastor, Vagnozzi, Kathleen Law, Meadows, Spade, Leland, Emmons, Nitz, Acciavatti, Meltzer, Garfield, Knollenberg, Calley, Palmer, David Law, Hansen, Robertson, Gaffney, Hune, Steil, Rick Jones, Pearce, Wenke, LaJoy, Brandenburg, Huizenga, Hildenbrand, Shaffer, Palsrok, Moss, Rocca, Ball, Marleau, Moolenaar, Caul, Booher, Moore, Meekhof, Hoogendyk and Scott and referred to the Committee on Banking and Financial Services.

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) IN CONNECTION WITH THE MORTGAGE LENDING  
2        PROCESS, A PERSON WHO WITH THE INTENT TO DEFRAUD DOES ANY OF THE  
3        FOLLOWING IS GUILTY OF THE CRIME OF RESIDENTIAL MORTGAGE FRAUD  
4        PUNISHABLE AS PROVIDED IN THIS SECTION:

5        (A) MAKES ANY DELIBERATE MATERIAL MISSTATEMENT,  
6        MISREPRESENTATION, OR OMISSION.

7        (B) USES OR FACILITATES THE USE OF ANY DELIBERATE MATERIAL  
8        MISSTATEMENT, MISREPRESENTATION, OR OMISSION, KNOWING THAT IT  
9        CONTAINS A MATERIAL MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

1 (C) RECEIVES ANY PROCEEDS OR ANY OTHER MONEY IN CONNECTION  
2 WITH A RESIDENTIAL MORTGAGE CLOSING THAT THE PERSON KNEW RESULTED  
3 FROM A VIOLATION OF SUBDIVISION (A) OR (B).

4 (D) CONSPIRES TO VIOLATE ANY OF THE PROVISIONS OF SUBDIVISION  
5 (A), (B), OR (C).

6 (E) FILES OR CAUSES TO BE FILED WITH THE REGISTER OF DEEDS OF  
7 ANY COUNTY OF THIS STATE ANY DOCUMENT THE PERSON KNOWS TO CONTAIN A  
8 DELIBERATE MATERIAL MISSTATEMENT, MISREPRESENTATION, OR OMISSION.

9 (2) A CRIME OF RESIDENTIAL MORTGAGE FRAUD UNDER THIS SECTION  
10 SHALL NOT BE PREDICATED SOLELY UPON INFORMATION LAWFULLY DISCLOSED  
11 UNDER FEDERAL DISCLOSURE LAWS, REGULATIONS, AND INTERPRETATIONS  
12 RELATED TO THE MORTGAGE LENDING PROCESS.

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

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

18 (B) IN ANY COUNTY IN WHICH ANY ACT WAS PERFORMED IN  
19 FURTHERANCE OF THE VIOLATION.

20 (C) IN ANY COUNTY IN WHICH ANY PERSON ALLEGED TO HAVE VIOLATED  
21 THIS SECTION HAD CONTROL OR POSSESSION OF ANY PROCEEDS OF THE  
22 VIOLATION.

23 (D) IF A LOAN CLOSING OCCURRED, IN THE COUNTY IN WHICH THE  
24 CLOSING OCCURRED.

25 (E) IN ANY COUNTY IN WHICH A DOCUMENT CONTAINING A DELIBERATE  
26 MATERIAL MISSTATEMENT, MISREPRESENTATION, OR OMISSION IS FILED OR  
27 RECORDED WITH THE REGISTER OF DEEDS.

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

3 (A) EXCEPT FOR A VIOLATION DESCRIBED IN SUBDIVISION (B),  
4 IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN  
5 \$50,000.00, OR BOTH.

6 (B) IF THE VIOLATION INVOLVES ENGAGING OR PARTICIPATING IN A  
7 PATTERN OF RESIDENTIAL MORTGAGE FRAUD OR A CONSPIRACY OR ENDEAVOR  
8 TO ENGAGE OR PARTICIPATE IN A PATTERN OF RESIDENTIAL MORTGAGE  
9 FRAUD, IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A FINE OF NOT  
10 MORE THAN \$100,000.00, OR BOTH.

11 (5) IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION OF A  
12 DEFENDANT FOR A VIOLATION OF THIS SECTION COMMITTED BY AN EMPLOYEE  
13 OR AGENT OF THE DEFENDANT IF THE DEFENDANT DEMONSTRATES ALL OF THE  
14 FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

15 (A) THE DEFENDANT HAD IN FORCE AT THE TIME OF THE VIOLATION  
16 AND CONTINUES TO HAVE IN FORCE A WRITTEN POLICY THAT INCLUDES AT  
17 LEAST ALL OF THE FOLLOWING:

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

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

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

23 (iv) A REQUIREMENT FOR A CRIMINAL HISTORY CHECK BEFORE  
24 EMPLOYING AN EMPLOYEE OR ENGAGING AN AGENT AND A REQUIREMENT THAT  
25 THE DEFENDANT WILL NOT EMPLOY OR ENGAGE AN INDIVIDUAL WHOSE  
26 CRIMINAL HISTORY CHECK REVEALS A PREVIOUS CONVICTION OF A CRIME  
27 INVOLVING FRAUD.

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

3 (C) BEFORE THE VIOLATION OF THIS SECTION, THE DEFENDANT  
4 COMMUNICATED THE WRITTEN POLICY DESCRIBED IN SUBDIVISION (A) AND  
5 THE CONSEQUENCES FOR VIOLATING THE POLICY TO THE EMPLOYEE OR AGENT  
6 WHO COMMITTED THE VIOLATION.

7 (6) EACH VIOLATION OF THIS SECTION CONSTITUTES A SEPARATE  
8 OFFENSE.

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

12 (8) THIS SECTION SHALL NOT BE CONSTRUED TO CREATE ADDITIONAL  
13 DISCLOSURE REQUIREMENTS BEYOND THOSE OTHERWISE REQUIRED BY LAW.

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

19 (10) AS USED IN THIS SECTION:

20 (A) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH WHICH  
21 A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN, INCLUDING,  
22 BUT NOT LIMITED TO, SOLICITATION, APPLICATION, OR ORIGINATION,  
23 NEGOTIATION OF TERMS, THIRD-PARTY PROVIDER SERVICES, UNDERWRITING,  
24 SIGNING AND CLOSING, AND FUNDING OF THE LOAN. DOCUMENTS INVOLVED IN  
25 THE MORTGAGE LENDING PROCESS INCLUDE, BUT ARE NOT LIMITED TO,  
26 UNIFORM RESIDENTIAL LOAN APPLICATIONS OR OTHER LOAN  
27 APPLICATIONS; APPRAISAL REPORTS; HUD-1 SETTLEMENT STATEMENTS;

1 SUPPORTING PERSONAL DOCUMENTATION FOR LOAN APPLICATIONS SUCH AS W-2  
2 FORMS, VERIFICATIONS OF INCOME AND EMPLOYMENT, BANK STATEMENTS, TAX  
3 RETURNS, AND PAYROLL STUBS; AND ANY REQUIRED DISCLOSURES.

4 (B) "PATTERN OF RESIDENTIAL MORTGAGE FRAUD" MEANS 1 OR MORE  
5 MATERIAL MISSTATEMENTS, MISREPRESENTATIONS, OR OMISSIONS MADE  
6 DURING THE MORTGAGE LENDING PROCESS THAT INVOLVE 2 OR MORE  
7 RESIDENTIAL PROPERTIES AND THAT HAVE THE SAME OR SIMILAR INTENTS,  
8 RESULTS, ACCOMPLICES, VICTIMS, OR METHODS OF COMMISSION OR  
9 OTHERWISE ARE INTERRELATED BY DISTINGUISHING CHARACTERISTICS.

10 (C) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED  
11 LIABILITY COMPANY, PARTNERSHIP, TRUSTEE, ASSOCIATION, OR OTHER  
12 LEGAL ENTITY.

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