

HOUSE BILL No. 5301

October 11, 2007, Introduced by Reps. Gaffney, Angerer, Tobocman, Byrnes, Simpson, Accavitti, Johnson, Miller, Melton, Young, Kathleen Law, Hopgood, Brown, Valentine, Hammel, Robert Jones, Mayes, Vagnozzi, Gonzales, Virgil Smith and Dean and referred to the Committee on Banking and Financial Services.

A bill to amend 2002 PA 660, entitled "Consumer mortgage protection act," by amending sections 10 and 11 (MCL 445.1640 and 445.1641).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (a) Obtain a declaratory judgment that a method, act, or
5 practice of the person is a violation of this act.

6 (b) Enjoin a person who is engaging or about to engage in a
7 method, act, or practice that is a violation of this act.

8 (c) Obtain a civil fine ~~of not more than \$10,000.00 for the~~
9 ~~first offense and not more than \$20,000.00 for the second and any~~
10 ~~subsequent offense~~ **UNDER SUBSECTION (2)**.

1 (2) IN ADDITION TO ANY OTHER REMEDIES OR PENALTIES IMPOSED BY
2 THIS ACT, A CREDITOR, A MEMBER, OFFICER, DIRECTOR, OR EMPLOYEE OF A
3 CREDITOR, OR ANY OTHER PERSON THAT VIOLATES THIS ACT OR AN ORDER
4 MADE OR RULE PROMULGATED UNDER THIS ACT, OR DIRECTLY OR INDIRECTLY
5 COUNSELS, AIDS, OR ABETS IN A VIOLATION, IS RESPONSIBLE FOR A CIVIL
6 FINE OF NOT MORE THAN \$3,000.00 FOR EACH VIOLATION, EXCEPT THAT A
7 PERSON SHALL NOT BE FINED MORE THAN \$30,000.00 FOR A TRANSACTION
8 RESULTING IN MORE THAN 1 VIOLATION, PLUS THE COSTS OF
9 INVESTIGATION.

10 Sec. 11. ~~(1) A person is not liable for a violation under~~
11 ~~section 10 if the person shows that the violation was an~~
12 ~~unintentional and bona fide error notwithstanding the maintenance~~
13 ~~of procedures reasonably adopted to avoid the error. Examples of a~~
14 ~~bona fide error include clerical, calculation, computer~~
15 ~~malfunction, programming, or printing errors. An error in legal~~
16 ~~judgment with respect to a person's obligations under this act is~~
17 ~~not a bona fide error.~~

18 ~~—— (2) A person is not liable for a violation under section 10~~
19 ~~if, within 60 days after discovery of the violation and before the~~
20 ~~institution of an action under section 10, the person notifies the~~
21 ~~borrower or buyer of the violation and corrects the violation in a~~
22 ~~manner that, to the extent it is reasonably possible to do so,~~
23 ~~restores the borrower or buyer to the position in which the~~
24 ~~borrower or buyer would have been if the violation had not~~
25 ~~occurred.~~

26 ~~—— (3) The person alleged to have violated this act has the~~
27 ~~burden of proving that he or she is not liable as provided under~~

1 ~~this section.~~ A CREDITOR, A MEMBER, OFFICER, DIRECTOR, OR EMPLOYEE
2 OF A CREDITOR, OR ANY OTHER PERSON THAT KNOWINGLY VIOLATES THIS ACT
3 OR AN ORDER MADE OR RULE PROMULGATED UNDER THIS ACT IS GUILTY OF A
4 MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$15,000.00,
5 IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR BOTH.

6 Enacting section 1. This amendatory act does not take effect
7 unless all of the following bills of the 94th Legislature are
8 enacted into law:

9 (a) Senate Bill No. ____ or House Bill No. 5294 (request no.
10 02456'07 *).

11 (b) Senate Bill No. ____ or House Bill No. 5295 (request no.
12 04909'07 *).

13 (c) Senate Bill No. ____ or House Bill No. 5296 (request no.
14 04910'07 *).

15 (d) Senate Bill No. ____ or House Bill No. 5297 (request no.
16 04911'07 *).

17 (e) Senate Bill No. ____ or House Bill No. 5298 (request no.
18 04912'07 *).

19 (f) Senate Bill No. ____ or House Bill No. 5299 (request no.
20 04913'07 *).

21 (g) Senate Bill No. ____ or House Bill No. 5300 (request no.
22 05435'07).

23 (h) Senate Bill No. ____ or House Bill No. 5302 (request no.
24 05437'07).

25 (i) Senate Bill No. ____ or House Bill No. 5303 (request no.
26 05438'07).