

FIRST REGULAR SESSION

SENATE BILL NO. 74

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0325S.011

AN ACT

To amend chapter 443, RSMo, by adding thereto seven new sections relating to predatory lending.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 443, RSMo, is amended by adding thereto seven new sections, to be known as sections 443.600, 443.603, 443.606, 443.609, 443.612, 443.615, and 443.618, to read as follows:

443.600. 1. Sections 443.600 to 443.618 shall be known as the "Missouri Predatory Lending Prevention Act".

2. As used in sections 443.600 to 443.618, the following terms mean:

(1) "Affiliate", any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 et seq.;

(2) "Annual percentage rate", the annual percentage rate for a loan, calculated according to the provisions of the federal Truth In Lending Act, 15 U.S.C. 1601, et seq., and the regulations promulgated by the Board of Governors of the Federal Reserve System;

(3) "Borrower", any natural person obligated to repay a loan, including but not limited to a co-obligor, co-signer, or guarantor;

(4) "Bridge loan", a loan with a maturity of less than twelve months that requires only payments of interest until the entire unpaid balance is due;

(5) "Flipping", knowingly refinancing an existing home loan when the new loan does not have a tangible benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. Home loan refinancings are presumed to be flippings if

21 any of the following occur:

22 (a) More than fifty percent of the prior debt refinanced bears a
23 lower interest rate than the new loan;

24 (b) It will take more than four years for the borrower to recoup
25 the costs of the points and fees and other closing costs through savings
26 resulting from the lower interest rate;

27 (c) The new loan refinances an existing home loan that has a
28 special mortgage originated, subsidized, or guaranteed by or through a
29 state, tribal, or local government, political subdivision, or nonprofit
30 organization, which either bears a below-market interest rate, or has
31 nonstandard payment terms beneficial to the borrower, such as a term
32 that varies payments with income, limits payments to a percentage of
33 income, or requires no payments under specified conditions, and the
34 borrower will lose one or more of the benefits of the special mortgage as
35 a result of the refinancing;

36 (6) "High-cost home loan", a home loan that has either:

37 (a) Points and fees that exceed five percent of the total loan
38 amount; or

39 (b) An annual percentage rate of interest that equals or exceeds
40 eight percentage points over the yield on U.S. Treasury securities with
41 comparable periods of maturity to the loan maturity, as of the fifteenth
42 day of the month immediately preceding the month in which the
43 application for credit is received by the lender;

44 (7) "Home loan", a loan, including an open-end credit plan, other
45 than a reverse mortgage transaction, that has both:

46 (a) A principal amount that does not exceed the conforming loan
47 size limit for a single-family dwelling as established by the Federal
48 National Mortgage Association; and

49 (b) Security in the form of a security interest in a manufactured
50 home or a mortgage, deed of trust, or other document representing a
51 security interest in real estate upon which there is or will be located one
52 or more structures designed principally to be occupied by one to four
53 families which is or will be occupied as the principal dwelling of the
54 borrower;

55 (8) "Lender", any person who over any calendar year originates,
56 makes, purchases, accepts as assignee, or acts as a mortgage broker for
57 more than four home loans;

58 (9) "Mortgage broker", any individual who, for a fee, acts as an
59 intermediary between borrowers and lenders;

60 (10) "Points and fees" includes:

61 (a) All items required to be disclosed as finance charges under 12
62 CFR Part 226, Subpart A, Section 4(a) and (b), except interest;

63 (b) All compensation and fees paid to mortgage brokers in
64 connection with a home loan transaction;

65 (c) All items listed in 12 CFR Part 226, Subpart A, Section 4(c)(7),
66 but only if the person originating the home loan receives direct
67 compensation in connection with the charge;

68 (11) "Total loan amount", the same as "amount borrowed" in 12
69 CFR Part 226, Subpart A, Section 32(c)(5).

443.603. 1. A lender shall not recommend or encourage
2 nonpayment of an existing loan or other debt prior to and in connection
3 with the closing or planned closing of a home loan that refinances all or
4 any portion of such existing loan or debt.

5 2. A lender shall not directly or indirectly coerce, intimidate, or
6 compensate appraisers for the purpose of influencing their independent
7 judgment with respect to the value of real estate that is covered by a
8 home loan or is being offered as security according to an application for
9 a home loan.

10 3. A lender shall not leave blanks in any loan documents or forms
11 to be filled in after the documents are signed by the borrower.

12 4. A lender shall not require or allow the advance collection of a
13 premium, on a single premium basis, for any credit life, credit disability,
14 credit accident and health, credit unemployment, credit property
15 insurance, or any other life or health insurance, or the advance
16 collection of a fee for any debt cancellation or suspension agreement or
17 contract, in connection with any home loan, whether such premium or
18 fee is paid directly by the consumer or is financed by the consumer
19 through such loan. Insurance premiums that are not included in the
20 home loan principal and that are calculated and paid on a monthly basis
21 shall not be considered to have been financed by the lender for purposes
22 of this subsection.

23 5. A lender shall not engage in the practice of flipping as defined
24 in subdivision (5) of subsection 2 of section 443.600.

25 6. If the discussions between a lender and a borrower regarding

26 a home loan are conducted primarily in a language other than English,
27 the lender shall, before the closing, provide an additional copy of all
28 information required to be disclosed to the borrower under the federal
29 Truth In Lending Act, 15 U.S.C. 1601 et seq., translated into the language
30 in which the discussions were primarily conducted. The lender shall not
31 charge a fee for this translated document.

32 7. A lender shall not charge a late payment fee except according
33 to the following rules:

34 (1) The late payment fee shall not be in excess of four percent of
35 the amount of the payment past due;

36 (2) The late payment fee shall not be assessed unless the late
37 payment is past due for more than fifteen days;

38 (3) The late payment fee shall not be charged more than once with
39 respect to a single late payment. If a late payment fee is deducted from
40 a payment made on the loan, and the deduction causes a subsequent
41 delinquency or default, then no late payment fee shall be charged for the
42 subsequent delinquency or default. If a late payment fee has been
43 charged once with respect to a particular late payment, a late payment
44 fee may not be charged for any future payment that would have been
45 timely and sufficient, but for the previous delinquency or default;

46 (4) A late payment fee shall not be charged unless the lender
47 notifies the borrower, more than fifteen days after the date the payment
48 was due, that a late payment fee has been charged. A late payment fee
49 shall not be collected from a borrower who informs the lender that
50 nonpayment of an installment is in dispute and presents proof of
51 payment within fifteen days after receipt of the lender's notice of the
52 late fee;

53 (5) A lender shall treat each payment as having been posted on
54 the same date as it was received by the lender, servicer, or lender's
55 agent, or at the address provided to the borrower by the lender, servicer,
56 or the lender's agent for making payments; and

57 (6) A lender shall not charge a late fee on any payment that is
58 timely made but not accepted or accepted more than fifteen days after
59 the payment was due. The lender shall be obligated to accept any late
60 or timely payments made by the borrower and properly credit such
61 payments. However, a lender shall not forfeit any rights secured by the
62 mortgage by accepting any such payments.

63 8. High-cost home loans shall not contain a provision that permits
64 the lender, in its sole discretion, to accelerate indebtedness.

65 9. A lender shall not charge a fee for informing or transmitting to
66 a borrower the balance due to pay off a home loan or to provide a
67 release upon prepayment. A lender shall provide a payoff balance no
68 later than ten business days after a written request is received by the
69 lender.

70 10. The amount of any yield spread premium or other
71 compensation paid to a mortgage broker shall be disclosed to a borrower
72 no later than three days prior to the closing of a home loan.

73 11. If a lender institutes judicial action to foreclose or collect a
74 home loan, the borrower shall have the right to assert any claim or
75 defense based on a violation of this section to offset the foreclosure or
76 collection.

 443.606. 1. A lender shall not make a high-cost home loan that
2 directly or indirectly finances any of the following:

3 (1) Points and fees;

4 (2) Charges payable to third parties;

5 (3) Prepayment fees or penalties payable by the borrower in a
6 refinancing transaction if the lender or an affiliate holds the note being
7 refinanced.

8 2. High-cost home loans shall not contain a scheduled payment
9 that is more than twice as large as the average of earlier scheduled
10 monthly payments during the first seven years of the loan. This
11 subsection shall not apply to a bridge loan or a high-cost home loan with
12 a payment schedule that is adjusted to account for the seasonal or
13 irregular income of the borrower.

14 3. High-cost home loans shall not contain a prepayment penalty
15 of more than three percent of the original principal amount of the note
16 in the first year, two percent in the second year, one percent in the third
17 year, or any prepayment penalty beyond the third year.

18 4. High-cost home loans shall not include payment terms under
19 which the outstanding principal balance will increase at any time over
20 the course of the loan because the regular periodic payments do not
21 cover the full amount of interest due. This subsection shall not apply to
22 a high-cost home loan with a payment schedule that is adjusted to
23 account for the seasonal or irregular income of the borrower.

24 5. High-cost home loans shall not contain a provision that
25 increases the interest rate after default. This subsection shall not apply
26 to interest rate changes in variable rate loans that are otherwise
27 consistent with the provisions of the loan agreement, unless the change
28 in the interest rate is caused by an event of default or acceleration of
29 the debt.

30 6. High-cost home loans shall not include terms under which more
31 than two periodic payments required under the loan agreement are
32 consolidated and paid in advance from the loan proceeds.

33 7. A lender shall not pay a contractor under a home improvement
34 contract from the proceeds of a high-cost home loan unless the
35 instrument is payable to the borrower or jointly to both the borrower
36 and the contractor, or at the election of the borrower through a third-
37 party escrow agent in accordance with terms established in a written
38 agreement signed by the borrower, the lender, and the contractor prior
39 to the date of payment.

40 8. A lender shall not charge a borrower any fees or other charges
41 to modify, renew, extend, or amend a high-cost home loan or to defer any
42 payment due under the terms of a high-cost home loan, except when the
43 borrower is in default on the loan.

44 9. A lender shall not originate a high-cost home loan without first
45 receiving certification from a counselor approved by the U.S.
46 Department of Housing and Urban Development, a state housing
47 financing agency, or the regulatory agency that has jurisdiction over the
48 lender, that the borrower has received counseling on the advisability of
49 the loan transaction.

50 10. A lender shall not make a high-cost home loan unless the
51 lender reasonably believes at the time the loan is consummated that one
52 or more of the borrowers, when considered individually or collectively,
53 will be able to make the scheduled payments to repay the obligation
54 based upon a consideration of their current and expected income,
55 current obligations, employment status, and other financial resources,
56 other than the borrower's equity in the dwelling which secures
57 repayment of the loan. A borrower shall be presumed to be able to make
58 the scheduled payments to repay the obligation if, at the time the loan
59 is consummated, the borrower's total monthly debts, including amounts
60 owed under the loan, do not exceed fifty percent of the borrower's

61 monthly gross income, as verified by the loan application, borrower's
62 financial statement, credit report, and any other financial information
63 provided to the person originating the loan. However, no presumption
64 of inability to make the scheduled payments to repay the obligation shall
65 arise solely from the fact that at the time the loan is consummated, the
66 borrower's total monthly debts, including amounts owed under the loan,
67 exceed fifty percent of the borrower's monthly gross income.

68 11. High-cost home loans shall not include a provision for
69 mandatory arbitration or any other restriction that limits a borrower's
70 right to seek relief through the judicial process.

71 12. A lender making a high-cost home loan shall not recommend
72 or encourage a borrower into a loan with higher costs than the lowest-
73 cost category of loans for which the borrower could qualify with that
74 lender or any of its affiliates. No mortgage broker arranging a high-cost
75 home loan may recommend or encourage a borrower into a loan with
76 higher costs than the lowest-cost array of loans available to that
77 borrower from the lenders with whom the mortgage broker regularly
78 does business.

443.609. It shall be a violation of sections 443.600 to 443.618 if any
2 lender, in bad faith, divides any loan transaction into separate parts for
3 the purpose of evading application of sections 443.600 to 443.618.

443.612. At least three business days prior to consummation of a
2 high-cost home loan, a lender shall disclose all of the following to the
3 borrower clearly and conspicuously in writing in a form the borrower
4 may keep:

5 (1) Notice. The following statement: "YOU ARE NOT REQUIRED
6 TO COMPLETE THIS AGREEMENT MERELY BECAUSE YOU HAVE
7 RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN
8 APPLICATION. IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE
9 A MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR HOME AND
10 ANY MONEY YOU HAVE PUT INTO IT IF YOU DO NOT MEET YOUR
11 OBLIGATIONS UNDER THE LOAN.";

12 (2) Annual percentage rate. The amount of the annual percentage
13 rate;

14 (3) Regular or balloon payment. The amount of the regular
15 monthly (or other periodic) payment and the amount of any balloon
16 payment;

17 **(4) Variable rate.** For variable rate transactions, a statement that
18 the interest rate and monthly payment may increase, and the amount of
19 the maximum monthly payment based upon the maximum interest rate;

20 **(5) Applicable law.** The following statement: "THIS LOAN IS
21 SUBJECT TO THE MISSOURI PREDATORY LENDING PREVENTION
22 ACT, SECTIONS 443.600 to 443.618, RSMo."

443.615. 1. If a lender asserts that grounds for acceleration exist
2 and requires the payment in full of all sums secured by the security
3 instrument, the borrower or anyone authorized to act on the borrower's
4 behalf shall have the right, at any time until title is transferred by
5 means of foreclosure, executory process, sheriff's sale, or any other
6 judicial proceeding, to cure the default and reinstate the high-cost home
7 loan by tendering the delinquent amount and any permissible fees. Any
8 borrower who cures a default in accordance with this section shall be
9 reinstated to the same position as if the default had not occurred and
10 shall nullify, as of the date of the cure, any acceleration of any
11 obligation under the security instrument or note arising from the
12 default.

13 **2.** Before any action is filed to foreclose on the property or other
14 action is taken to seize or transfer ownership of the property, a notice
15 of the right to cure the default shall be delivered, in person or by
16 certified mail, to the borrower informing the borrower of the following:

17 **(1)** The nature of default claimed on the high-cost home loan and
18 the right to cure the default by paying the sum of money required to
19 cure the default. However, a lender or servicer shall not refuse to accept
20 any partial payment made or tendered in response to such notice and
21 shall properly credit such payment. If the amount required to cure the
22 default will change during the twenty-day period after the effective date
23 of the notice due to the application of a daily interest rate or the
24 addition of permissible late fees, then the notice shall clearly state
25 information to enable the borrower to calculate the amount required to
26 cure the default at any point during the twenty-day period;

27 **(2)** The date by which the borrower shall cure the default to avoid
28 acceleration and initiation of foreclosure, or other action to seize the
29 property, which date shall not be less than twenty days after the date
30 the notice is effective;

31 **(3)** The name, address, and telephone number of a person to whom

32 the payment or tender shall be made;

33 (4) The name, address, and telephone number of the lender or its
34 representative whom the borrower may contact if the borrower
35 disagrees with the lender's assertion that a default has occurred or the
36 correctness of the lender's calculation of the amount required to cure
37 the default;

38 (5) That if the borrower does not cure the default by the date
39 specified, the lender may take steps to terminate the borrower's
40 ownership in the property by requiring payment in full of the high-cost
41 home loan and commencing a foreclosure proceeding or other action to
42 seize, secure, or protect the property.

43 3. A borrower shall not be required to pay any charge, fee, or
44 penalty attributable to the exercise of the right to cure a default on a
45 high-cost home loan.

46 4. If a default is cured prior to the initiation of any action to
47 foreclose or collect on a high-cost home loan, the lender shall not
48 institute any action for that default. If a default is cured after the
49 initiation of any action to foreclose or collect on the loan, the lender
50 shall not prosecute the action and shall take necessary steps to limit
51 costs incurred and cease any scheduled sale or transfer of the home. If
52 a default is cured in accordance with this section, the borrower shall
53 have the right to assert such cure in any judicial proceeding as a defense
54 or to establish the absence of a default and halt any collection
55 proceedings.

443.618. 1. Any lender who violates sections 443.600 to 443.618
2 shall be liable to the borrower for all of the following:

3 (1) Actual damages, including consequential and incidental
4 damages;

5 (2) Damages equal to the finance charges agreed to in the home
6 loan agreement, plus ten percent of the amount financed;

7 (3) Punitive damages; and

8 (4) Reasonable attorney fees and court costs.

9 2. A borrower may be granted injunctive, declaratory, and such
10 other equitable relief as the court deems appropriate in an action to
11 enforce compliance with sections 443.600 to 443.618.

12 3. The right of rescission granted under 15 U.S.C. 1601 et seq.
13 shall be available to a borrower for any violation of sections 443.600 to

14 443.618 by way of offset or recoupment against a party foreclosing on a
15 high-cost home loan or collecting on the loan at any time.

16 4. The remedies provided in this section are not the exclusive
17 remedies available to a borrower. The borrower is not required to
18 exhaust any administrative remedies provided under any applicable law
19 before proceeding under this section or any other applicable law.

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