

SECOND REGULAR SESSION

SENATE BILL NO. 1043

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

Read 1st time February 13, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4471S.02I

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, cosigner, 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

21 circumstances. Home loan refinancings are presumed to be flippings
22 if any of the following occur:

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

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

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

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

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

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

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

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

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

56 (8) "Lender", any person who over any calendar year originates,
57 makes, purchases, accepts as assignee, or acts as a mortgage broker for

58 more than four home loans;

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

61 (10) "Points and fees" includes:

62 (a) All items required to be disclosed as finance charges under
63 12 CFR Part 226, Subpart A, Section 4(a) and (b), except interest;

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

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

69 (11) "Total loan amount", the same as "amount borrowed" in 12
70 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
3 connection with the closing or planned closing of a home loan that
4 refinances all or 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
9 for 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
13 a premium, on a single premium basis, for any credit life, credit
14 disability, credit accident and health, credit unemployment, credit
15 property insurance, or any other life or health insurance, or the
16 advance collection of a fee for any debt cancellation or suspension
17 agreement or contract, in connection with any home loan, whether such
18 premium or fee is paid directly by the consumer or is financed by the
19 consumer through such loan. Insurance premiums that are not
20 included in the home loan principal and that are calculated and paid
21 on a monthly basis shall not be considered to have been financed by the
22 lender for purposes 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
30 language in which the discussions were primarily conducted. The
31 lender shall not 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
39 with respect to a single late payment. If a late payment fee is deducted
40 from a payment made on the loan, and the deduction causes a
41 subsequent delinquency or default, then no late payment fee shall be
42 charged for the subsequent delinquency or default. If a late payment
43 fee has been charged once with respect to a particular late payment, a
44 late payment fee may not be charged for any future payment that would
45 have been timely and sufficient, but for the previous delinquency or
46 default;

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

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

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

62 payments. However, a lender shall not forfeit any rights secured by the
63 mortgage by accepting any such payments.

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

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

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

74 11. If a lender institutes judicial action to foreclose or collect a
75 home loan, the borrower shall have the right to assert any claim or
76 defense based on a violation of this section to offset the foreclosure or
77 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
12 with 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
17 third 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

22 to 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
26 apply 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
31 more than two periodic payments required under the loan agreement
32 are 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
42 any payment due under the terms of a high-cost home loan, except
43 when the borrower is in default on the loan.

44 9. A lender shall not originate a high-cost home loan without
45 first 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
48 the lender, that the borrower has received counseling on the
49 advisability of 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
52 one or more of the borrowers, when considered individually or
53 collectively, will be able to make the scheduled payments to repay the
54 obligation based upon a consideration of their current and expected
55 income, current obligations, employment status, and other financial
56 resources, other than the borrower's equity in the dwelling which
57 secures repayment of the loan. A borrower shall be presumed to be
58 able to make the scheduled payments to repay the obligation if, at the

59 time the loan is consummated, the borrower's total monthly debts,
60 including amounts owed under the loan, do not exceed fifty percent of
61 the borrower's monthly gross income, as verified by the loan
62 application, borrower's financial statement, credit report, and any
63 other financial information provided to the person originating the
64 loan. However, no presumption of inability to make the scheduled
65 payments to repay the obligation shall arise solely from the fact that at
66 the time the loan is consummated, the borrower's total monthly debts,
67 including amounts owed under the loan, exceed fifty percent of the
68 borrower's monthly gross income.

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

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

443.609. It shall be a violation of sections 443.600 to 443.618 if
2 any lender, in bad faith, divides any loan transaction into separate
3 parts for the purpose of evading application of sections 443.600 to
4 443.618.

443.612. At least three business days prior to consummation of
2 a 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
9 HAVE A MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR
10 HOME AND ANY MONEY YOU HAVE PUT INTO IT IF YOU DO NOT
11 MEET YOUR OBLIGATIONS UNDER THE LOAN.";

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

13 percentage 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
18 that the interest rate and monthly payment may increase, and the
19 amount of the maximum monthly payment based upon the maximum
20 interest rate;

21 (5) Applicable law. The following statement: "THIS LOAN IS
22 SUBJECT TO THE MISSOURI PREDATORY LENDING PREVENTION
23 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
7 home loan by tendering the delinquent amount and any permissible
8 fees. Any borrower who cures a default in accordance with this section
9 shall be reinstated to the same position as if the default had not
10 occurred and shall nullify, as of the date of the cure, any acceleration
11 of any obligation under the security instrument or note arising from
12 the 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
20 accept any partial payment made or tendered in response to such
21 notice and shall properly credit such payment. If the amount required
22 to cure the default will change during the twenty-day period after the
23 effective date of the notice due to the application of a daily interest
24 rate or the addition of permissible late fees, then the notice shall
25 clearly state information to enable the borrower to calculate the
26 amount required to cure the default at any point during the twenty-day

27 **period;**

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

32 **(3) The name, address, and telephone number of a person to**
33 **whom the payment or tender shall be made;**

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

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

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

47 **4. If a default is cured prior to the initiation of any action to**
48 **foreclose or collect on a high-cost home loan, the lender shall not**
49 **institute any action for that default. If a default is cured after the**
50 **initiation of any action to foreclose or collect on the loan, the lender**
51 **shall not prosecute the action and shall take necessary steps to limit**
52 **costs incurred and cease any scheduled sale or transfer of the home. If**
53 **a default is cured in accordance with this section, the borrower shall**
54 **have the right to assert such cure in any judicial proceeding as a**
55 **defense or to establish the absence of a default and halt any collection**
56 **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**
15 **a 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**
19 **law before proceeding under this section or any other applicable law.**

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