

CHAPTER NO. 801

HOUSE BILL NO. 3597

By Representatives Larry Turner, Marrero, John DeBerry, Ulysses Jones, Lois DeBerry, Henri Brooks, Kernell, Sontany, Rowe, Miller, Fitzhugh, Harmon, Moore, Hood, Maddox, Favors, Langster, Brown, Campfield, Eldridge, McDonald, McDaniel, Roach, Briley, Hackworth, Litz, Tidwell, Shepard, Cobb, McCormick, Montgomery, Hensley, Harrison, Hargett, Hawk, Maggart, Gresham, Overbey, Russell Johnson, Bo Watson, Coleman, Fraley, Winningham, Lynn, Ferguson, Pinion, Shaw, McMillan, DuBois, Baird, Todd, Bone, West, McKee, Pleasant, Mike Turner, Windle, Yokley, Rinks, Towns and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 3989

By Senators Herron, Burks, Kilby, Bowers, Williams, Beavers, Black, Bryson, Burchett, Cohen, Cooper, Crowe, Crutchfield, Finney, Ford, Fowler, Harper, Haynes, Henry, Jackson, Ketron, Kurita, Kyle, McLeary, McNally, Miller, Norris, Person, Ramsey, Southerland, Tracy, Woodson and Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Title 47, and to enact the "Tennessee Home Loan Protection Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known, and may be cited, as the "Tennessee Home Loan Protection Act."

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.) and the regulations there under, as amended from time to time.

(2) "Annual Percentage Rate" means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. §1601, et seq.), and the regulations (including official staff commentary) promulgated pursuant thereto by the board of governors of the federal reserve system (as said act, regulations and official staff commentary are amended from time to time).

(3) "Bona fide loan discount points" means loan discounts points actually paid by the borrower to the lender for the purpose of reducing, and which in fact result in a bona fide reduction of the interest rate applicable to the loan by a minimum of twenty-five (25) basis points per discount point.

(4) "Borrower" means a natural person obligated to pay a home loan, including a co-borrower.

(5) "Construction loan" means a loan for the initial construction of a borrower's principal dwelling on land owned by the borrower with a maturity of less than eighteen

(18) months that only requires the payment of interest until such time as the entire unpaid balance is due and payable, or a fee in lieu of interest.

(6) "Commissioner" means the commissioner of the department of financial institutions.

(7) "Department" means the department of financial institutions.

(8) "Lender" shall mean "lender" as defined in 24 CFR 3500.2. "Lender" shall also mean a "mortgage loan broker" as defined in Tennessee Code Annotated, Section 45-13-102(12).

(9) "High-cost home loan" means a home loan in which the terms of the loan meet or exceed the rate threshold defined in subdivision (15) or the total points and fees threshold defined in subdivision (17).

(10) "Home loan" means a loan, in which

(A) The principal amount of the loan does not exceed the lesser of the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association, or \$350,000;

(B) The debt is incurred primarily for personal, family, or household purposes; and,

(C) The loan is secured by a mortgage, deed of trust on real estate in this state upon which there is located or there is to be located a structure:

(i) Designed principally for occupancy by one (1) to four (4) families; and

(ii) That is or will be occupied by a borrower as the borrower's principal dwelling.

(D) Home loan shall not include:

(i) Any residential mortgage transaction as defined in Reg. Z 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time.

(ii) An open-end credit loan as defined in section 226.2(a)(20) of Title 12 of the Code of Federal Regulations and as used in the official staff commentary of the board of governors of the federal reserve system as the same may be amended from time to time, except as provided in Section 6;

(iii) A reverse mortgage transaction as defined in Chapter 30, Title 47 of the Tennessee Code Annotated;

(iv) A construction loan as defined in Item 5 of this section; and

(v) any loan which is insured or guaranteed by, securitized for, or sold to a government agency, including the Department of Housing and Urban Development, the Department of Veteran Affairs, the Tennessee Housing Development Agency, or the United States Department of Agriculture.

(11) "Person" means any individual, corporation, partnership, trust, or any other business unit or legal entity, as the context may require.

(12)

(a) "Points and fees" means as defined in 12 CFR §226.32 and as used in the official staff commentary of the board of governors of the federal reserve system as amended from time to time.

(b) "Points and fees" shall exclude up to and including two (2) Bona Fide Loan Discount Points.

(c) "Points and fees" shall not include charges for all items listed in section 226.4(c)(7) of Title 12 of the Code of Federal Regulations as provided in Section 226.32(b)(1)(iii) where such charges are paid to an affiliate of the lender and the amount is reasonably consistent with amounts charged for comparable services by a party not affiliated with the lender at the time the loan is made. Provided, however, only the amount of the charge that exceeds the charge for comparable items shall be included within the term "points and fees".

(13) "Principal loan amount" is the total amount of money paid to, received by, or credited to the account of the borrower on which interest is to be computed.

(14) "Servicer" means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a high-cost home loan.

(15) "Rate threshold" means the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a "mortgage" pursuant to §152 of the Home Ownership Equity Protection Act of 1994, 15 U.S.C. § 1602(aa), and the regulations adopted pursuant thereto by the federal reserve system, including 12 CFR §226.32, and as used in the official staff commentary of the board of governors of the federal reserve system as the same may be amended from time to time.

(16) "Total loan amount" means the term as defined in 12 CFR §226.32 and as used in the official staff commentary of the board of governors of the federal reserve system as the same may be amended from time to time.

(17) "Total points and fees threshold" means the total points and fees payable by the borrower at or before the loan closing exceed:

(a) The greater of 1) five percent (5%) of the total loan amount or 2) \$2,400 if the total loan amount is more than thirty thousand dollars (\$30,000); or

(b) Eight percent (8%) of the total loan amount if the total loan amount is thirty thousand dollars (\$30,000) or less.

SECTION 3. The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lender shall recommend or encourage default or skipping a payment on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of the existing loan or debt.

(2)

(A) A lender or servicer of a high-cost home loan shall provide a borrower or his designated agent, upon request, two (2) pay-off statements within any twelve (12) month period, free of charge. Such statement shall be valid for a minimum of fifteen (15) days.

(B) The lender may require that any request for a pay-off statement be sent in writing, by facsimile, or other electronic means, to a designated address or location and contain sufficient information to identify the loan, including the name of the borrower as listed on the loan documents and the loan number.

(C) A request for a pay-off statement sent to the location designated by the lender or servicer shall be provided within five (5) business days after an authorized request, plus any required fee, is received by the lender.

(D) A lender or servicer may charge a reasonable fee for any additional requests for a pay-off statement during the twelve (12) month period.

(3) No lender or servicer shall charge a fee to provide a release upon prepayment of a high-cost home loan except for the actual cost paid to record the release.

(4)

(A) No lender shall knowingly or intentionally make a high-cost home loan that refinances within thirty (30) months an existing home loan or high-cost home loan of the borrower when the new loan does not have a reasonable benefit to the borrower, considering all the circumstances, including the terms of both the new and refinanced loans, the economic and non-economic circumstances, the cost of the new loan, and the borrower's circumstances.

(5) No lender shall make a high-cost home loan that finances, directly or indirectly, any single premium credit life insurance, as defined in §56-7-904(4), credit accident, credit disability, credit unemployment, credit property or health insurance, any other credit insurance product, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, unless (A) the total benefits payable under all such policies or contracts issued in connection with such loan do not exceed \$50,000, (B) the principal amount of financed premiums for such policy or contract shall be repayable during the term of such policy or contract, and (C) the amount payable under such credit life insurance policy shall not at any time during the term of such loan be more than one hundred three percent (103%) of the then unamortized principal

balance of such loan. Nothing in this subdivision prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis or prohibits bona fide credit property insurance required by the federal housing administration or the United States department of agriculture to be paid in a single premium to the respective federal agency. As used in this subsection, "credit property insurance" means property insurance written in connection with credit transactions under which the lender is the primary beneficiary.

(6)

(A) A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is made that one or more of the borrowers, when considered individually or collectively, will be able to make scheduled payments to repay the obligation based upon consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan).

(B) A borrower shall be deemed to be able to make the scheduled payments to repay the high-cost home loan if, at the time the loan is consummated, the borrower's total monthly debts as identified on the borrower's credit report and as computed by the lender's underwriting guidelines and methodology, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower's monthly gross income:

(i) As verified by the credit application, the borrower's financial statements, tax returns, payroll receipts or third party income verification; and,

(ii) As underwritten in accordance with the lender's underwriting guidelines and methodology.

(C) No presumption of inability to make the scheduled payments to repay the high-cost home loan shall arise solely from the fact that, at the time the loan is consummated, the borrower's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(7) No lender may directly or indirectly finance, in connection with any high-cost home loan, any points and fees in excess of an amount the greater of three percent (3%) of the total loan amount or \$1,500 if the total loan amount is more than thirty thousand dollars (\$30,000) or, an amount equal to five percent (5%) of the total loan amount if the total loan amount is thirty thousand dollars (\$30,000) or less. Provided, however, that registrants under Tennessee Code Annotated Title 45, Chapter 5, may finance as points and fees an amount not to exceed the charges allowed pursuant to § 45-5-403(a)(1)(A) on loans made under the provisions of Title 45, Chapter 5.

(8) A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan with the same lender or affiliate of the lender; provided, however, this provision shall not prohibit a lender from charging points and fees in

connection with any additional proceeds received by the borrower in connection with the refinancing. For purposes of this subsection, additional proceeds shall be defined as the amount over and above the amount required to pay off the existing high-cost home loan.

(9)

(A) No prepayment fees or penalties shall be provided in the loan documents for a high-cost home loan or charged a borrower which exceed in aggregate two percent (2%) of the loan amount prepaid in the first twenty-fourth (24) months following the loan closing.

(B) No prepayment fees or penalties shall be provided in the loan documents or charged a borrower in a refinancing of a high-cost home loan if the lender or an affiliate of the lender is the note holder of the note being refinanced.

(C) Any refund method not permitted under 12 CFR 226.32(d)(6) and (d)(7) shall be prohibited.

(10) No lender shall make a high-cost home loan that contains a scheduled payment that is more than twice as large as the average of the earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of a borrower.

(11) No lender shall make a high-cost home loan that contains a payment schedule with regular periodic payments that cause the principal balance to increase.

(12) No lender shall make a high-cost home loan that contains a provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default in the terms of the note or deed of trust.

(13) No lender shall make a high-cost home loan that includes terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(14) No lender shall make a high-cost home loan that contains a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or acceleration of the indebtedness.

(15) No lender shall make a high-cost home loan that provides for a late payment fee except as follows:

(A) The late payment fee shall not be in excess of five percent (5%) of the amount of the payment past due or fifteen dollars (\$15), whichever is greater;

(B) The late payment fee shall only be assessed for a payment past due for ten (10) days or more;

(C) The late payment fee shall not be imposed more than once with respect to a single late payment and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee.

(16) A lender shall not make a high-cost home loan unless the lender has given the following written notice, in at least twelve (12) point bold type, to the borrower, acknowledged in writing and signed by the borrower, not later than the time the notice provided by 12 CFR § 226.31(c) is required:

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) MAINTAINS A LIST OF CREDIT COUNSELORS IN YOUR AREA. YOU MAY OBTAIN HUD'S LIST OF CREDIT COUNSELORS BY CONTACTING HUD DIRECTLY OR BY CONTACTING THE TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING LENDERS.

(17)

(A) A lender may not present a borrower with a high-cost home loan at closing with a materially different interest rate, term, type of loan, or settlement

charges from the settlement charges disclosed on the last disclosures required by the Real Estate Settlement Procedures Act (12 U.S.C. §§2601-2617), without re-disclosure not less than one (1) day before closing. For purposes herein “materially different settlement charges” means the total settlement charges disclosed on the final settlement statement would exceed such previously last disclosed settlement charges by an amount equal to more than fifteen percent (15%) in the aggregate.

(B) A high-cost home loan may not be closed in a location other than an office of the lender, at the office of any attorney at law licensed to practice in Tennessee, or at the office of a title insurance company or title insurance agency licensed to do business in Tennessee, or the office of a settlement or closing agent, or the commercial office of a mortgage broker.

(18) A lender or its servicer shall report at least quarterly both the favorable and unfavorable payment history information of the borrower on payments due to the lender on a high-cost home loan to a nationally recognized consumer credit reporting agency.

(19)

(A) Each mortgage or deed of trust securing a high-cost home loan shall state on the face of the instrument the following legend prominently displayed: “This instrument secures a high-cost home loan as defined in Tennessee Code Annotated, Title 45.”

(B) Each note which meets the definition of a high-cost loan as defined in this chapter shall state on the face of the instrument the following legend prominently displayed:

“This instrument is a high-cost home loan as defined in Tennessee Code Annotated, Title 45.”

(20)

(A) No lender, in connection with a high-cost home loan, shall encourage or solicit any person to execute any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document for a high-cost home loan if any material terms of the loan or transaction, including but not limited to, the duration, interest rate, or fees, are omitted or incomplete.

(B) No person, in connection with a high-cost home loan, shall modify (including, but not limited to, any alteration or change) any loan agreement, mortgage, deed, deed of trust, loan application, settlement statement, or other loan or closing document, after the execution of such document, unless such modification is 1) with the consent of the person or persons affected by the change and such consent is in writing, or 2) the modification is authorized by a valid power of attorney authorizing such modification. A power of attorney is valid for this purpose if it specifically includes the type or nature of the modification.

(C) No person, in connection with a high-cost home loan, shall encourage, solicit, or conspire with any other person to violate this section.

(21) A lender may not make a high-cost home loan without first providing to the borrower, in a separate document clearly identified, notice of availability of counselors from third-party nonprofit organizations approved by the United States Department of Housing and Urban Development, a housing financing agency of this state, or the regulatory agency which has jurisdiction over the lender. Such document shall provide either: 1) a list of counselors who are located in the county of the borrower or the nearest available county where such counselors are available; or 2) a resource list for the Department of Housing and Urban Development, Tennessee Housing & Development Agency or the Tennessee Department of Financial Institutions, including toll free numbers and website information if available to identify such counselors. The borrower shall be afforded the opportunity to seek such counseling without penalty. For purposes of this section, this document shall be provided to the borrower not later than the time that the good faith estimate of closing costs required by the Real Estate Settlement and Procedures Act must be provided to the borrower.

SECTION 4.

(a) If a lender or servicer asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the security instrument of a high-cost home loan, the borrower, or anyone authorized to act on the borrower's behalf, shall have the right at any time, prior to three (3) business days prior to a foreclosure sale, to cure the default and reinstate the home loan by tendering the amount or performance. Cure of default shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, any acceleration of any obligation under the security instrument or note arising from the default.

(b) Not less than thirty (30) days prior to publishing notice of foreclosure as provided in Tennessee Code Annotated, Section 35-5-104, or commencing an action for judicial foreclosure, a notice of the right to cure the default must be sent to the borrower informing the borrower of the following:

(1) The nature of default claimed on the home loan, and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the thirty-day period after the effective date of the notice, due to the application of a daily interest rate or the addition of late fees, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the thirty-day period;

(2) The date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure, or other action to seize the home, which date shall not be less than thirty (30) days after the date the notice is sent, and the name and address and phone number of a person to whom the payment or tender shall be made;

(3) That if the borrower does not cure the default by the date specified, steps may be taken to terminate the borrower's ownership in the property by

requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the home; and

(4) The name and address of the lender or servicer and the telephone number of a representative of such person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

(c) To cure a default under this subsection, a borrower shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default as provided for in this section, other than the fees specifically allowed by this section. During the cure period, the borrower shall be liable for any expenses actually incurred to preserve, maintain, or protect the property or the security interest of the lender that are otherwise permitted in the note or deed of trust, or other loan documents. After a lender publicly files a notice of foreclosure or takes other action to seize or transfer ownership of the home, the borrower shall be liable for attorneys' fees that are reasonable and actually incurred by the lender, based on a reasonable hourly rate and a reasonable number of hours and reasonable cost for publishing notice of and conducting the foreclosure sale.

(d) A borrower's right to cure a default prior to commencing a foreclosure proceeding under this section may not be invoked more than once in any twelve-month-period.

SECTION 5.

(a) Notwithstanding any other provision of law, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all claims and defenses with respect to the high-cost home loan that the borrower could assert against the lender of the high-cost home loan; unless the purchaser or assignee demonstrates by a preponderance of the evidence, that the purchaser or assignee exercised due diligence, at the time of the purchase of the high-cost home loans, or within a reasonable time thereafter, intended to prevent the purchaser or assignee from purchasing or taking assignment of the high-cost home loan that violates the provisions of this chapter.

(b) The relief granted in an action, pursuant to subsection (a) of this section:

(1) May be asserted by the borrower acting only in an individual capacity;

(2) May not exceed the sum of the amount required to reduce the borrower's liability so that it is no longer a high-cost home loan plus the amount required to recover costs, including reasonable attorney's fees;

(3) May be asserted by the borrower of a high-cost home loan after notice of acceleration or foreclosure of the high-cost home loan, asserting a violation of Section 45-20-103 in an individual action to enjoin foreclosure or to preserve or obtain possession of the home secured by the high-cost home loan; and

(4) Must be brought within three (3) years from the date of the occurrence of the violation; provided, however, a borrower shall not be barred

from asserting a violation of Section 45-20-103 in an action to collect the debt which was brought more than one year from the date of the occurrence of such violation as a matter of defense by recoupment or set-off in such action except as otherwise provided by law.

(c) This section shall not apply if a purchaser or assignee has exercised such due diligence by demonstrating that such purchaser or assignee:

(1) Has in place at the time of the purchase or assignment of the loans, policies that expressly prohibit the purchase or acceptance of assignment, by such purchaser or assignee, of any high-cost home loan containing such violations;

(2) Requires, by the applicable purchase contract, that a seller or assignor of such loans to the purchaser or assignee represents and warrants to the purchaser or assignee as of the applicable sale date that either:

(i) The seller or assignor will not sell or assign to the purchaser or assignee any high-cost home loan containing such violations; or

(ii) The seller or assignor is a beneficiary of a representation and warranty from a previous seller or assignor to that effect, and, as a result of its purchase of the loans, the purchaser or assignee is a beneficiary of such representation and warranty; and

(iii) Exercises reasonable due diligence at or before the time of the purchase or assignment of home loans, or within a reasonable period of time after the purchase or assignment of such home loans, that is intended by the purchaser or assignee to prevent the purchaser or assignee from purchasing or taking assignment of any high-cost home loan containing such violations.

(d) The reasonable due diligence requirement referred to in subdivision (c)(2)(iii) may be met by employing lender's quality control sampling methodology and shall not require loan-by-loan review, for purposes of this subsection.

SECTION 6.

(a) No person shall, with the intent to avoid the application or provisions of this Act:

(1) Divide a loan transaction into separate parts;

(2) Structure a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this Act when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or

(3) Engage in any other subterfuge.

(b) For purposes of this section, open-end credit plan shall mean “open-end loan” as defined in section 226.2(a)(20) of Title 12 of the Code of Federal Regulations and as used in the official staff commentary of the board of governors of the federal reserve system as the same may be amended from time to time.

(c) For open-end credit plan, “points and fees” means that term as defined in 12 CFR § 226.32 and as used in the official staff commentary of the board of governors of the federal reserve system that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line.

SECTION 7.

(a) Except as provided in Section 8, any lender found by a preponderance of the evidence to have violated this Act shall be subject to the following:

(1) The making of a high-cost home-loan which violates one or more of the following: (a) items (1), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (16), (17), (19), (20) or (21) of Section 3 of this Act; or (b) Section 6 of this Act is subject to the following penalties:

(i) Actual damages;

(ii) For willful or intentional violations, statutory damages equal to the amount of all finance charges and fees paid by the borrower and forfeiture of the remaining interest under the loan; and

(iii) Costs and reasonable attorney’s fees.

(2) The collecting or servicing of a high-cost home-loan which violates one or more of the items (2), (3), (15), or (18) of Section 3 of this Act, Section 4 of this Act, or Section 6 of this Act is subject to the following penalties:

(i) Actual damages;

(ii) For willful or intentional violations, statutory damages equal to the amount of all finance charges and fees paid by the borrower; and

(iii) Costs and reasonable attorney’s fees.

(b) Punitive damages may be awarded where the court finds that the violation is malicious or reckless. Punitive damages shall be limited to three times the actual damages and the amount of all finance charges and fees paid by the borrower, exclusive of costs and reasonable attorney’s fees.

(c) The loan may be reformed to effect the remedies provided in this section 8.

(d) The remedies provided in this section are not exclusive and are in addition to any other remedies available to a borrower under applicable law.

(e) Any action under this section shall be brought within three (3) years from the date the borrower discovered or should have discovered the violation. This subsection does not bar a borrower from asserting a violation of this chapter as a defense in an action to collect the debt which was brought more than three (3) years from the date of occurrence of the violation as a matter of defense by recoupment or set-off in such action.

(f) In any action under this section, upon finding that the action is frivolous or brought for the purpose of harassment, the court may require the borrower instituting the action to indemnify the defendant for reasonable attorney's fees and costs. To assert a claim under this section, the lender or servicer shall file a motion with the court and provide at least fifteen (15) days after service in which the borrower may respond to deny, withdraw, or amend the complaint.

(g) In any action under this section, notice of the action by copy shall be filed simultaneously with the department of financial institutions.

SECTION 8. A lender or servicer, as applicable, of a high-cost home loan who, when acting in good faith, fails to comply with sections 3, 4, or 6 of this Act, will not be deemed to have violated such section if the lender or servicer establishes that either:

(a) Within thirty (30) days of discovery and prior to the institution of any action under this Act:

(1) The borrower is notified of the compliance failure;

(2) The lender or servicer has made appropriate restitution to the borrower;

(3) With respect to the violations identified in Section 7(a)(1) of this Act, the lender or servicer makes whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the loan satisfy the requirements of Section 3 of this Act; or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this Act; and

(4) With respect to the violations identified in section 7(a)(2) of this Act, the lender or servicer (i) makes whatever adjustments or refunds and/or (ii) takes such action as necessary to cure such violation by affording the borrower the rights and benefits provided under such provisions of this Act.

(B) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within sixty (60) days after the discovery of the compliance failure and prior to the institution of any action under this Act or the receipt of written notice of the compliance failure,

(1) The borrower is notified of the compliance error;

(2) The lender has made appropriate restitution to the borrower; and

(3) With respect to the violations identified in Section 7(a)(1) of this Act, the lender or servicer makes whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the loan satisfy the requirements of Section 3 of this Act; or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this Act; and

(4) With respect to the violations identified in Section 7(a)(2) of this Act, the lender or servicer (i) makes whatever adjustments or refunds and/or (ii) takes such action as necessary to cure such violation by affording the borrower the rights and benefits provided under such provisions of this Act.

(C) Examples of a bona fide error include but are not limited to clerical, calculation, computer malfunction and programming, and printing errors.

(D) For purposes of this section, "appropriate restitution" means the reimbursement by the lender of any points and fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as he or she would have been had the loan, as adjusted, in accordance with subsections (a) and (b) of this section, been originally made.

SECTION 9.

(a) The commissioner is granted the power to interpret the provisions of this Act and to enact reasonable substantive and procedural rules as are necessary and proper for the administration, enforcement and interpretation of the provisions of this Act.

(b)

(1) For the purpose of discovering violations of this Act or securing information lawfully required hereunder, the commissioner may conduct examinations and investigations of the business and the books, accounts, records and files used therein of each person subject to the regulatory jurisdiction of the commissioner or of each person which the commissioner reasonably suspects to be subject to the regulatory jurisdiction of the commissioner. For purposes of defraying the examination and investigation expenses incurred by the commissioner in the enforcement of this Act, the commissioner shall recover the actual costs for such examination and investigation from the person.

(2) The commissioner has the power to subpoena witnesses, compel their attendance, require the production of evidence, administer an oath and examine any person under oath in connection with the enforcement of the provisions of this Act.

(3) If, after notice and opportunity for a hearing, the commissioner determines that a person has violated the provisions of this Act, or any administrative rule issued pursuant thereto, the commissioner may take any or all of the following actions:

(A) Order the person to cease and desist violating this Act or any administrative rules issued pursuant thereto.

(B) Order a person to make restitution for actual damages to borrowers.

(C) Impose a civil penalty of up to ten thousand dollars (\$10,000) for each violation.

(D) Suspend, revoke, or refuse to renew any license or registration issued by the commissioner.

(E) Censure, suspend or bar an individual responsible for a violation of this Act, or any administrative rule issued pursuant thereto, from any position of management, control, employment or other capacity related to activities regulated by the commissioner.

(F) Pending completion of an investigation or any formal proceeding instituted pursuant to this act, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, the commissioner may enter an emergency order to be effective immediately and until entry of a final order. The emergency order may include: a temporary suspension of the lender's authority to make high-cost home loans under this Act; a temporary cease and desist order; a temporary prohibition against a lender transacting high-cost home loan business in this State, or such other order relating to high-cost home loans as the commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding. In cases requiring immediate action, the commissioner shall promptly afford a subsequent hearing upon application to rescind the action taken.

(G) Impose such other conditions as the commissioner deems appropriate.

(c) In the event a person does not comply with an order or subpoena for documents or testimony issued pursuant to this Act, the commissioner may petition a chancery court having jurisdiction to seek injunctive relief to compel compliance with any such order. The power is conferred and the duty is imposed upon the several chancery courts, in all proper cases to award such injunctive relief; provided, that the order issued by the commissioner shall not be reviewable in a proceeding initiated under this subsection.

(d) The commissioner may bring an action in the chancery court of Davidson County to enjoin any act or practice in or from this state which constitutes a violation of this Act, or any administrative rule issued pursuant thereto. The court may not require the commissioner to post a bond in bringing such an action. Upon a proper showing by the commissioner, the court shall grant a permanent or temporary injunction, restraining order, writ of mandamus, disgorgement, or other proper equitable relief including the recovery by the commissioner of costs and attorney fees.

(e) The provisions of this section shall not limit the authority of the Attorney General from instituting or maintaining any action within the scope of its authority with respect to practices prohibited under this Act.

SECTION 10. Tennessee Code Annotated, Section 35-5-101, is amended by adding the following language as a new subsection thereto:

(e) In any sale of land to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial orders of process, the trustee or other party that sells such property shall send to the debtor and any co-debtor a copy of the notice required in §35-5-104. The notice shall be sent on or before the first date of publication provided in this section by registered or certified mail, return receipt requested. The notice shall be sent to the following:

(1) If the debtor:

(A) The location of the property; and

(B) The last known residence of the debtor or such other address provided by the debtor to the mortgagor or trustee, at least thirty (30) days prior to the publication date, if such residence or other last known address is different from the address of the property.

(2) If a co-debtor, the last known residence address or other address of the co-debtor which is provided to the mortgagor or trustee at least thirty (30) days prior to the publication date, but only if such residence or such other address is both different from the address of the property and different from that of the debtor.

SECTION 11.

(a) It is unlawful for any entity to make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over the internet or any radio or television, or in any other way, an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the sale, distribution, offering for sale or advertising of any loan, refinance, insurance or any other product or service which is untrue, deceptive, misleading, or which uses the name or logo of any other lender without the express written consent of the lender whose name is used. For purposes of this section, "Lender" means any bank, savings and loan association, savings bank, trust company, credit union, industrial loan and thrift company, mortgage company, mortgage broker, or any subsidiary or affiliate thereof.

(b) Each solicitation to an individual in violation of this section shall be considered a separate act. The commissioner of financial institutions, the commissioner of commerce and insurance, and the state attorney general is entitled to enforce the provisions of this act against any regulated entity within their jurisdiction or against any other person. The commissioners shall have authority to issue a cease and desist order and to impose a civil penalty of up to \$1,000 per violation.

(c) Any Lender whose name and/or logo is used in violation of this section is entitled to sue for damages, which shall include any actual damages, statutory penalties of \$1,000 per violation, and court costs and attorneys' fees.

SECTION 12. All counties, municipalities, or political subdivisions of this state are prohibited from enacting and enforcing ordinances, resolutions, and rules regulating financial and lending activities, including ordinances, resolutions, and rules disqualifying persons from doing business with a city, county, or municipality based upon lending practices, interest rates or imposing reporting requirements or any other obligations upon persons regarding financial services or lending practices of persons or entities, and any subsidiaries or affiliates thereof, who:

(1) Are subject to the jurisdiction of the department of financial institutions, including activities subject to this chapter;

(2) Are subject to the jurisdiction of the office of thrift supervision, the office of the comptroller of the currency, the national credit union administration, the federal deposit insurance corporation, the federal trade commission, or the United States department of housing and urban development;

(3) Originate, purchase, sell, buy, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in subdivisions (1) or (2) to assist or facilitate such transactions; or

(4) Are chartered by the United States congress to engage in secondary market mortgage transactions.

SECTION 13. The provisions of the Tennessee Home Loan Protection Act shall apply to all high-cost home loans applied for and closed on or after the effective date of this Act, except that, this Act shall not apply to the extent it is preempted by, or is in conflict with or inconsistent with the National Bank Act, the Homeowner's Loan Act, the Federal Credit Union Act or regulations issued by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation or the Federal Credit Union Administration, and as interpreted by the federal courts, to national or state banks or trust companies, federal or state savings institutions, federal or state credit unions, or the operating subsidiaries of any of the above.

SECTION 14. If any provision of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision of or application, and to that end the provisions if this act are declared to be severable.

SECTION 15. This act shall take effect January 1, 2007.

PASSED: May 10, 2006


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 26th day of May 2006


PHIL BREDESEN, GOVERNOR