

SECOND REGULAR SESSION

HOUSE BILL NO. 1492

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GEORGE (Sponsor), LOWE (44), DARROUGH, SPRENG,
ZWEIFEL AND WALSH (Co-sponsors).

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STEPHEN S. DAVIS, Chief Clerk

3265L.01I

AN ACT

To amend chapter 443, RSMo, by adding thereto seventeen new sections relating to the high risk home loan act.

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

Section A. Chapter 443, RSMo, is amended by adding thereto seventeen new sections,
2 to be known as sections 443.1000, 443.1003, 443.1006, 443.1009, 443.1012, 443.1015,
3 443.1018, 443.1021, 443.1024, 443.1027, 443.1030, 443.1033, 443.1036, 443.1039, 443.1042,
4 443.1045, and 443.1048, to read as follows:

443.1000. Sections 443.1000 to 443.1048 shall be known and may be cited as the
2 **"High Risk Home Loan Act".**

443.1003. As used in sections 443.1000 to 443.1048, the following terms mean:

2 (1) **"Approved credit counselor", a credit counselor approved by the director of**
3 **finance or the director of credit unions;**

4 (2) **"Borrower", a natural person who seeks or obtains a high risk home loan;**

5 (3) **"Good faith", honesty in fact in the conduct or transaction concerned;**

6 (4) **"High risk home loan", a home equity loan in which:**

7 (a) **At the time of origination, the annual percentage rate exceeds by more than six**
8 **percentage points in the case of a first lien mortgage, or by more than eight percentage**
9 **points in the case of a junior mortgage, the yield on United States Treasury securities**
10 **having comparable periods of maturity to the loan maturity as of the fifteenth day of the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 month immediately preceding the month in which the application for the loan is received
12 by the lender; or

13 (b) The total points and fees payable by the consumer at or before closing will
14 exceed the greater of five percent of the total loan amount or eight hundred dollars. The
15 eight-hundred-dollar figure shall be adjusted annually on January first by the annual
16 percentage change in the Consumer Price Index for All Urban Consumers for all items
17 published by the United States Department of Labor;

18 (5) "High risk home loan" does not include a loan that is made primarily for a
19 business purpose unrelated to the residential real property securing the loan or to an open-
20 end credit plan subject to 12 CFR 226;

21 (6) "Home equity loan", any loan secured by the borrower's primary residence
22 where the proceeds are not used as purchase money for the residence;

23 (7) "Lender", a natural or artificial person who transfers, deals in, offers, or makes
24 a high risk home loan. Lender includes, but is not limited to, creditors and brokers who
25 transfer, deal in, offer, or make high risk home loans. Lender does not include purchasers,
26 assignees, or subsequent holders of high risk home loans;

27 (8) "Points and fees", all items required to be disclosed as points and fees under 12
28 CFR 226.32; the premium of any single premium credit life, credit disability, credit
29 unemployment, or any other life or health insurance that is financed directly or indirectly
30 into the loan; and compensation paid directly or indirectly to a mortgage broker, including
31 a broker that originates a loan in its own name in a table-funded transaction, not otherwise
32 included in 12 CFR 226.4;

33 (9) "Reasonable", fair, proper, just, or prudent under the circumstances;

34 (10) "Servicer", any entity or person who is responsible for the collection or
35 remittance for, or has the right or obligation to collect or remit for, any lender, note owner,
36 or note holder or for a licensee's own account, of payments, interest, principal, and trust
37 items, such as hazard insurance and taxes on a residential mortgage loan, in accordance
38 with the terms of the residential mortgage loan, including loan payment follow-up,
39 delinquency loan follow-up, loan analysis, and any notifications to the borrower that are
40 necessary to enable the borrower to keep the loan current and in good standing;

41 (11) "Total loan amount" has the same meaning as that term is given in 12 CFR
42 226.32 and shall be calculated in accordance with the Federal Reserve Board's Official
43 Staff Commentary to such regulation.

443.1006. A creditor or broker shall not transfer, deal in, offer, or make a high risk
2 home loan if the creditor or broker does not believe at the time the loan is consummated
3 that the borrower will be able to make the scheduled payments to repay the obligation

4 based upon a consideration of his or her current and expected income, current obligations,
5 employment status, and other financial resources, other than the borrower's equity in the
6 dwelling that secures repayment of the loan. A borrower shall be presumed to be able to
7 repay the loan if, at the time the loan is consummated, or at the time of the first rate
8 adjustment, in the case of a lower introductory interest rate, the borrower's scheduled
9 monthly payments on the loan, including principal, interest, taxes, insurance, and
10 assessments, combined with the scheduled payments for all other disclosed debts, do not
11 exceed fifty percent of the borrower's monthly gross income.

443.1009. The lender shall verify the borrower's ability to repay the loan in the case
2 of a high risk home loan. The verification shall require, at a minimum, the following:

3 (1) That the borrower prepare and submit to the lender a personal income and
4 expense statement in a form jointly prescribed by the director of finance and the director
5 of credit unions;

6 (2) That the borrower's income is verified by means of tax returns, pay stubs,
7 accounting statements, or other prudent means;

8 (3) That a credit report is obtained regarding the borrower.

443.1012. A lender shall act in good faith in all relations with a borrower, including
2 but not limited to, transferring, dealing in, offering, or making a high risk home loan. No
3 lender shall employ fraudulent or deceptive acts or practices in the making of a high risk
4 home loan, including deceptive marketing and sales efforts.

443.1015. For any loan that is subject to the provisions of sections 443.1000 to
2 443.1048, no lender shall make a high risk home loan that includes a penalty provision for
3 payment made:

4 (1) After the expiration of the thirty-six-month period following the date the loan
5 was made; or

6 (2) That is more than:

7 (a) Three percent of the total loan amount if the prepayment is made within the
8 first twelve-month period following the date the loan was made;

9 (b) Two percent of the total loan amount if the prepayment is made within the
10 second twelve-month period following the date the loan was made; or

11 (c) One percent of the total loan amount if the prepayment is made within the third
12 twelve-month period following the date the loan was made.

443.1018. No lender shall:

2 (1) Transfer, deal in, offer, or make a high risk home loan that finances a single
3 premium credit life, credit disability, credit unemployment, or any other life or health

4 insurance, directly or indirectly. Insurance calculated and paid on a monthly basis shall
5 not be considered to be financed by the lender;

6 (2) Refinance any high risk home loan where such refinancing charges additional
7 points and fees within a twelve-month period after the original loan agreement was signed,
8 unless the refinancing results in a tangible net benefit to the borrower;

9 (3) Transfer, deal in, offer, or make a high risk home loan that finances points and
10 fees in excess of six percent of the total loan amount;

11 (4) Make a payment of any proceeds of a high risk home loan directly to a
12 contractor under a home improvement contract other than:

13 (a) By instrument payable to the borrower or payable jointly to the borrower and
14 contractor; or

15 (b) At the election of the borrower, by a third-party escrow agent in accordance
16 with the terms established in a written agreement that is signed by the borrower, the
17 lender, and the contractor before the date of payment;

18 (5) Transfer, deal in, offer, or make a high risk home loan, other than a loan
19 secured only by a reverse mortgage, with terms under which the outstanding balance will
20 increase at any time over the course of the loan because the regular periodic payments do
21 not cover the full amount of the interest due, unless the negative amortization is the
22 consequence of a temporary forbearance sought by the borrower;

23 (6) Transfer, deal in, offer, or make a high risk home loan where the loan amount
24 exceeds the value of the property securing the loan;

25 (7) Transfer, deal in, offer, or make a high risk home loan that provides for a late
26 payment fee, except under the following conditions:

27 (a) The late payment fee shall not be in excess of five percent of the amount of the
28 payment past due;

29 (b) The late payment fee shall only be assessed for a payment past due for fifteen
30 days or more;

31 (c) The late payment fee shall not be imposed more than once with respect to a
32 single late payment;

33 (d) A late payment fee that the lender has collected shall be reimbursed if the
34 borrower presents proof of having made a timely payment; and

35 (e) A lender shall treat each payment as posted on the same business day as it was
36 received by the lender, servicer, or lender's agent or at the address provided to the
37 borrower by the lender, servicer, or lender's agent for making payments;

38 (8) Transfer, deal in, offer, or make a high risk home loan that includes terms
39 under which more than two periodic payments required under the loan are consolidated
40 and paid in advance from the loan proceeds provided to the borrower;

41 (9) Transfer, deal in, offer, or make a high risk home loan that contains a provision
42 that permits the lender, in its sole discretion, to accelerate the indebtedness; provided that
43 this provision does not prohibit acceleration of a loan in good faith due to a borrower's
44 failure to abide by the material terms of the loan; or

45 (10) Transfer, deal in, offer, or make a high risk home loan unless the lender has
46 given the following notice or a substantially similar notice in writing, to the borrower,
47 acknowledged in writing and signed by the borrower not later than the time the notice is
48 required under the notice provision contained in 12 CFR 226.31(c):

49 "NOTICE TO BORROWER YOU SHOULD BE AWARE THAT YOU MIGHT
50 BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP
51 AROUND AND COMPARE LOAN RATES AND FEES. LOAN RATES AND CLOSING
52 COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR
53 PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR
54 EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED, AND THE TYPE
55 OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES
56 COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT. IF
57 YOU ACCEPT THE TERMS OF THIS LOAN, THE LENDER WILL HAVE A
58 MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY
59 MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT
60 OBLIGATIONS UNDER THE LOAN. YOU SHOULD CONSULT AN ATTORNEY-AT-
61 LAW AND AN APPROVED CREDIT COUNSELOR OR OTHER EXPERIENCED
62 FINANCIAL ADVISOR REGARDING THE RATE, FEES, AND PROVISIONS OF THIS
63 LOAN BEFORE YOU PROCEED. A LIST OF APPROVED CREDIT COUNSELORS
64 IS AVAILABLE BY CONTACTING THE MISSOURI DIVISION OF FINANCE OR
65 THE MISSOURI DIVISION OF CREDIT UNIONS. YOU ARE NOT REQUIRED TO
66 COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE
67 RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. ALSO,
68 YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT
69 RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR
70 REGULAR PAYMENTS TO YOUR EXISTING LENDERS."

 443.1021. 1. If a high risk home loan becomes delinquent by more than thirty days,
2 the servicer shall send a notice advising the borrower that he or she may wish to seek
3 approved credit counseling.

2. The notice required in subsection 1 of this section shall, at a minimum, include the following language:

"YOUR LOAN IS OR WAS MORE THAN 30 DAYS PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY BE IN YOUR BEST INTEREST TO SEEK APPROVED CREDIT COUNSELING. A LIST OF APPROVED CREDIT COUNSELORS MAY BE OBTAINED FROM THE DIVISION OF FINANCE OR THE DIVISION OF CREDIT UNIONS."

3. If, within fifteen days after mailing the notice provided for under subsection 2 of this section, a lender, servicer, or lender's agent is notified in writing by an approved credit counselor and the approved credit counselor advises the lender, servicer, or lender's agent that the borrower is seeking approved credit counseling, then the lender, servicer, or lender's agent shall not institute legal action for thirty days after the date of that notice. Only one such thirty-day period of forbearance is allowed under this section per subject loan.

4. If, within the thirty-day period provided under subsection 3 of this section, the lender, servicer, or lender's agent, the approved credit counselor, and the borrower agree to a debt management plan, then the lender, servicer, or lender's agent shall not institute legal action for as long as the debt management plan is complied with by the borrower. The agreed debt management plan shall be in writing and signed by the lender, servicer, or lender's agent, the approved credit counselor, and the borrower. No modification of an approved debt management plan shall be made without the mutual agreement of the lender, servicer, or lender's agent, the approved credit counselor, and the borrower. Upon written notice to the lender, servicer, or lender's agent, the borrower may change approved credit counselors.

5. If the borrower fails to comply with the agreed debt management plan, nothing in this section shall be construed to impair the legal right of the lender, servicer, or lender's agent to enforce the contract.

443.1024. 1. Before an action is filed to foreclose or collect money due under a high risk home loan or before other action is taken to seize or transfer ownership of property subject to a high risk home loan, the lender or lender's assignee of the loan shall deliver to the borrower a notice of the right to cure the default, informing the borrower of all of the following:

(1) The nature of the default;

(2) The borrower's right to cure the default by paying the sum of money required, provided that a lender or assignee shall accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change within thirty

10 days of the notice due to the application of a daily interest rate or the addition of late fees,
11 the notice shall give sufficient information to enable the borrower to calculate the amount
12 at any point within the thirty-day period;

13 (3) The date by which the borrower may cure the default to avoid a court action,
14 acceleration and initiation of foreclosure, or other action to seize the property, which date
15 shall not be less than thirty days after the date the notice is delivered, and the name,
16 address, and telephone number of a person to whom the payment or tender shall be made;

17 (4) That if the borrower does not cure the default by the date specified, the lender
18 or assignee may file an action for money due or take steps to terminate the borrower's
19 ownership in the property by requiring payment in full of the high risk home loan and
20 commencing a foreclosure proceeding or other action to seize the property;

21 (5) The name, address, and telephone number of a person whom the borrower may
22 contact if the borrower disagrees with the assertion that a default has occurred or the
23 correctness of the calculation of the amount required to cure the default.

24 2. If a lender or assignee asserts that grounds for acceleration exist and requires
25 the payment in full of all sums secured by the high risk home loan, the borrower or anyone
26 authorized to act on the borrower's behalf may, at any time before the title is transferred
27 by means of foreclosure, by judicial proceeding and sale, or other means, cure the default,
28 and reinstate the high risk home loan. Cure of the default shall reinstate the borrower to
29 the same position as if the default had not occurred and shall nullify, as of the date of the
30 cure, an acceleration of any obligation under the high risk home loan arising from the
31 default.

32 3. To cure a default under this section, a borrower shall not be required to pay any
33 charge, fee, or penalty attributable to the exercise of the right to cure a default, other than
34 the fees specifically allowed by this subsection. The borrower shall not be liable for any
35 attorney fees relating to the default that are incurred by the lender or assignee prior to or
36 during the thirty-day period set forth in subsection 1 of this section, nor for any such fees
37 in excess of one hundred dollars that are incurred by the lender or assignee after the
38 expiration of the thirty-day period but before the lender or assignee files a foreclosure or
39 other judicial action or takes other action to seize or transfer ownership of the real estate.
40 After the lender or assignee files a foreclosure or other judicial action or takes other action
41 to seize or transfer ownership of the real estate, the borrower shall only be liable for
42 attorney fees that are reasonable and actually incurred by the lender or assignee, based on
43 a reasonable hourly rate and a reasonable number of hours.

44 4. If a default is cured prior to the initiation of any action to foreclose or to seize the
45 residence, the lender or assignee shall not institute a proceeding or other action for that

46 **default. If a default is cured after the initiation of any action, the lender or assignee shall**
47 **take such steps as are necessary to terminate the action.**

48 **5. A lender or a lender's assignee of a high risk home loan that has the legal right**
49 **to foreclose shall use the judicial foreclosure procedures provided by law. In such a**
50 **proceeding, the borrower may assert the nonexistence of a default and any other claim or**
51 **defense to acceleration and foreclosure, though no such claim or defense shall be deemed**
52 **a compulsory counterclaim.**

443.1027. 1. There is hereby established the "Mortgage Awareness Program"
2 **within the divisions of finance and credit unions to provide counseling and education**
3 **regarding residential mortgage loans.**

4 **2. The core curriculum of the mortgage awareness program shall include all of the**
5 **following:**

- 6 **(1) Explanation of the amount financed;**
- 7 **(2) Explanation of the finance charge;**
- 8 **(3) Explanation of the annual percentage rate;**
- 9 **(4) Explanation of the total payments;**
- 10 **(5) Explanation of the loan costs, including broker's fees, finance charges, points,**
11 **and origination fees;**
- 12 **(6) Explanation of the right of rescission;**
- 13 **(7) Explanation of foreclosure procedures;**
- 14 **(8) Explanation of the significant debt ratios, including total debt to income, loan**
15 **debt to income, and loan debt to value of residence;**
- 16 **(9) Explanation of adjustable rate mortgage;**
- 17 **(10) Explanation of balloon payments;**
- 18 **(11) Explanation of credit options;**
- 19 **(12) Explanation of each item that appears on a good faith estimate;**
- 20 **(13) Explanation of prepayment penalties.**

21 **3. Counseling session attendees shall complete a personal income and expense**
22 **statement, as well as a balance sheet, on forms provided by the director of finance and the**
23 **director of credit unions.**

24 **4. Prior to signing a certificate of completion, approved credit counselors shall**
25 **privately discuss with each attendee that attendee's income and expense statement and**
26 **balance sheet, as well as the terms of any loan the attendee currently has or may be**
27 **contemplating, and provide a third-party review to establish the affordability of the loan.**

28 **5. Counseling session attendees shall be given a brochure that contains information**
29 **covered by the mortgage awareness program.**

30 **6. Any lender, prior to making a high risk home loan, shall inform the borrower**
31 **in writing of the right to participate in the mortgage awareness program.**

32 **7. No lender shall offer less favorable loan terms to a borrower due to a borrower's**
33 **participation in the mortgage awareness program.**

34 **8. Except as prohibited elsewhere in this section, the borrower may waive**
35 **participation in the program, provided that the waiver occurs no less than two business**
36 **days after the day that the borrower receives the notice required by subsection 6 of this**
37 **section and that the waiver is in writing in a form approved by the director of finance and**
38 **the director of credit unions.**

443.1030. 1. On or before October first and April first of each year, each servicer
2 **of Missouri residential mortgage loans shall report to the director of finance or the director**
3 **of credit unions the default and foreclosure data of conventional loans for the six-month**
4 **periods ending June thirtieth and December thirty-first, respectively.**

5 **2. Each servicer shall report the following information:**

6 **(1) The average quarterly dollar amount of conventional one to four family**
7 **mortgage loans secured by Missouri real estate;**

8 **(2) The average quarterly number of conventional one to four family mortgage**
9 **loans secured by Missouri real estate;**

10 **(3) The average quarterly dollar amount of conventional one to four family**
11 **mortgage loans secured by Missouri real estate that are in default over ninety days;**

12 **(4) The average quarterly number of conventional one to four family mortgage**
13 **loans secured by Missouri real estate that are in default over ninety days;**

14 **(5) The dollar amount of foreclosures on one to four family conventional loans**
15 **completed during the reporting period;**

16 **(6) The number of foreclosures on one to four family conventional loans completed**
17 **during the reporting period;**

18 **(7) Whether any of the loans where a foreclosure was completed were originated**
19 **less than eighteen months before the completed foreclosure;**

20 **(8) Whether any of the loans where a foreclosure was completed had a note rate**
21 **greater than ten percent for first lien mortgage loans or greater than twelve percent in the**
22 **case of a junior lien.**

23 **3. An officer of the servicer shall sign the form.**

24 **4. The director of finance and the director of credit unions shall review and analyze**
25 **the default and foreclosure rate data reports submitted under this section.**

26 **5. The reports and their analyses may be used for the following purposes:**

27 **(1) In setting the scope of a regularly scheduled examination;**

28 (2) In setting the scope of a special examination;

29 (3) In comparing the reported information of a servicer.

30 6. The director of finance and the director of credit unions may correspond with
31 a servicer to seek clarification of information contained in its report and to gather
32 additional data concerning loans in default or loans in foreclosure.

 443.1033. 1. In the case of any high risk home loan, the borrower shall be afforded
2 the opportunity to seek independent review by the division of finance or the division of
3 credit unions of the loan terms, in order to determine affordability of the loan, when and
4 if the general assembly appropriates adequate funding to the division of finance and the
5 division of credit unions specifically for this section.

6 2. The division of finance and the division of credit unions shall inform the
7 borrower of the amount the borrower has available for a monthly mortgage payment based
8 upon the borrower's budget.

9 3. The division of finance and the division of credit unions shall review loan
10 information pertaining to balloon payments and adjustable interest rates and other items
11 disclosed by the loan documents affecting amount of payment and shall inform the
12 borrower of such items.

13 4. If, based upon the review, the borrower determines that the loan is not in his or
14 her best economic interest, the reviewer shall so notify the lender. Such determination
15 shall enable the borrower to withdraw from the contemplated loan with no financial
16 penalty.

 443.1036. Without regard to whether a borrower is acting individually or on behalf
2 of others similarly situated, a mandatory arbitration provision of a high risk home loan
3 agreement that is oppressive, unfair, unconscionable, or substantially in derogation of the
4 rights of the borrower is void.

 443.1039. 1. Any violation of sections 443.1000 to 443.1048 shall constitute an
2 unlawful practice under section 407.020, RSMo. This subsection provides specific
3 authorization by the director of finance and the director of credit unions to the attorney
4 general to implement the powers of chapter 407, RSMo, or such powers are provided to
5 either the attorney general or a private citizen by statute regarding a violation of sections
6 443.1000 to 443.1048. The division of finance and the division of credit unions shall report
7 to the attorney general all violations of sections 443.1000 to 443.1048 of which each division
8 becomes aware.

9 2. If any provision of an agreement for a high risk home loan violates sections
10 443.1000 to 443.1048, such provision is unenforceable against the borrower.

11 **3. (1) Any entity or person who purchases or otherwise is assigned or subsequently**
12 **holds a high risk home loan shall be subject to all affirmative claims and defenses with**
13 **respect to the loan that the borrower could assert against the lender or broker of the loan,**
14 **provided that this subdivision shall not apply if the purchaser, assignee or holder**
15 **demonstrates by a preponderance of the evidence that it:**

16 **(a) Has in place, at the time of the purchase, assignment or transfer of the loans,**
17 **policies that expressly prohibit its purchase, acceptance of assignment or holding of any**
18 **high risk home loans;**

19 **(b) Requires by contract that a seller, assignor or transferor of high risk home**
20 **loans to the purchaser, assignee or transferee represents and warrants to the purchaser,**
21 **assignee or transferee that either:**

22 **a. The seller, assignor or transferor will not sell, assign or transfer any high risk**
23 **home loans to the purchaser, assignee or transferee; or**

24 **b. The seller, assignor or transferor is a beneficiary of a representation and**
25 **warranty from a previous seller, assignor or transferor to that effect; and**

26 **(c) Exercises reasonable due diligence at the time of the purchase, assignment or**
27 **transfer of high risk home loans, or within a reasonable period of time after the purchase,**
28 **assignment or transfer of such home loans, which is intended by the purchaser, assignee**
29 **or transferee to prevent the purchaser, assignee or transferee from purchasing or taking**
30 **assignment or otherwise holding any high risk home loans, provided that this reasonable**
31 **due diligence requirement may be met by sampling and need not require loan-by-loan**
32 **review.**

33 **(2) Limited to the amount required to reduce or extinguish the borrower's liability**
34 **under the high cost home loan plus the amount required to recover costs, including**
35 **reasonable attorney fees, a borrower acting only in an individual capacity may assert**
36 **claims that the borrower could assert against a lender of the home loan against a**
37 **subsequent holder or assignee of the home loan as follows:**

38 **(a) Within five years of the closing date of a high risk home loan, a violation of**
39 **sections 443.1000 to 443.1048 in connection with the loan as an original action; and**

40 **(b) At any time during the term of a high risk home loan, after an action to collect**
41 **on the home loan or to foreclose on the collateral securing the home loan has been initiated,**
42 **or the debt arising from the home loan has been accelerated, or the home loan has become**
43 **sixty days in default, any defense, claim, counterclaim or action to enjoin foreclosure or**
44 **preserve or obtain possession of the home that secures the loan.**

45 **4. In addition to the limitation of liability afforded to subsequent purchasers,**
46 **assignees, or holders under subsection 3 of this section, a lender and a subsequent**

47 purchaser, assignee, or holder of the high risk home loan is not liable for a violation of
48 sections 443.1000 to 443.1048 if:

49 (1) Within thirty days of the loan closing and prior to receiving any notice from the
50 borrower of the violation, the lender has made appropriate restitution to the borrower and
51 appropriate adjustments are made to the loan; or

52 (2) The violation was not intentional and resulted from a bona fide error in fact,
53 notwithstanding the maintenance of procedures reasonably adopted to avoid such errors,
54 and within sixty days of the discovery of the violation and prior to receiving any notice
55 from the borrower of the violation, the borrower is notified of the violation, appropriate
56 restitution is made to the borrower, and appropriate adjustments are made to the loan.

2 443.1042. No lender, with the intent to avoid the application or provisions of
3 sections 443.1000 to 443.1048, shall divide a loan transaction into separate parts or perform
any other subterfuge.

443.1045. The division of finance and the division of credit unions may adopt
2 reasonable rules to implement and administer sections 443.1000 to 443.1048. Any rule or
3 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under
4 the authority delegated in sections 443.1000 to 443.1048 shall become effective only if it
5 complies with and is subject to all of the provisions of chapter 536, RSMo, and, if
6 applicable, section 536.028, RSMo. Sections 443.1000 to 443.1048 and chapter 536, RSMo,
7 are nonseverable and if any of the powers vested with the general assembly pursuant to
8 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule
9 are subsequently held unconstitutional, then the grant of rulemaking authority and any
10 rule proposed or adopted after August 28, 2006, shall be invalid and void.

443.1048. 1. There shall be no waiver of any provision of 443.1000 to 443.1048,
2 except as explicitly provided in subsection 8 of section 443.1027.

3 2. To the extent sections 443.1000 to 443.1048 conflicts with any other Missouri
4 state financial regulation laws, sections 443.1000 to 443.1048 are superior and supersedes
5 such laws for the purposes of regulating high risk home loans in Missouri.

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