

SECOND REGULAR SESSION

# HOUSE BILL NO. 1667

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HARRIS (23) (Sponsor), PEARCE, CURLS, NASHEED, HARRIS (110), YAEGER, OXFORD, ZIMMERMAN, HUGHES, STORCH, JOHNSON, GEORGE, CORCORAN, GRILL, DARROUGH, RUCKER, BURNETT, WALSH, ROORDA, BAKER (25), PAGE, SCHOEMEHL, FALLERT, EL-AMIN, SCHIEFFER, LAMPE AND WILDBERGER (Co-sponsors).

Read 1st time January 15, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4290L.02I

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### AN ACT

To amend chapter 443, RSMo, by adding thereto seven new sections relating to home ownership protection, with a penalty provision.

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*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  
2 known as sections 443.1000, 443.1001, 443.1002, 443.1003, 443.1004, 443.1005, and 443.1006,  
3 to read as follows:

**443.1000. Sections 443.1000 to 443.1006 shall be known as the "Missouri  
2 Homeowners' Protection Act". For the purposes of sections 443.1000 to 443.1006, the  
3 following terms and phrases mean:**

4 (1) "Creditor", the secured creditor or creditors named in the debt obligation and  
5 document creating the lien. Creditor shall also mean a mortgage broker, as used in  
6 sections 443.1000 to 443.1006;

7 (2) "Flipping a home loan", the making of a home loan to a borrower that  
8 refinances an existing home loan when the new loan does not have reasonable, tangible net  
9 benefit to the borrower considering all of the circumstances, including but not limited to,  
10 the terms of both the new and refinanced loans, the cost of the new loan, and the  
11 borrower's circumstances;

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.

12           (3) "Fully indexed rate", equals the index rate prevailing at the time a residential  
13 mortgage loan is originated, plus the margin that will apply after the expiration of an  
14 introductory interest rate;

15           (4) "Points and fees", (a) includes:

16           a. All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and  
17 12 C.F.R. 226.4(b), except interest or the time price differential;

18           b. All items described in 12 C.F.R. 226.32(b)(1)(iii);

19           c. All compensation paid directly or indirectly to a mortgage broker from any  
20 source, including a mortgage broker that originates a loan in its own name in a  
21 table-funded transaction;

22           d. The cost of all premiums financed by the creditor, directly or indirectly, for any  
23 credit life, credit disability, credit unemployment or credit property insurance, or any  
24 other life or health insurance, or any payment financed by the creditor directly or  
25 indirectly for any debt cancellation or suspension agreement or contract, except that  
26 insurance premiums or debt cancellation or suspension fees calculated and paid in full on  
27 a monthly basis shall not be considered financed by the creditor;

28           e. All prepayment fees or penalties that are incurred by the borrower if the loan  
29 refinances a previous loan originated or currently held by the same creditor or an affiliate  
30 of the creditor;

31           f. For open-end loans, the total points and fees known at or before closing, plus the  
32 minimum additional fees the borrower would be required to pay to draw down an amount  
33 equal to the total credit line.

34           (b) Points and fees shall not include taxes, filing fees, recording, and other charges  
35 and fees paid or to be paid to public officials for determining the existence of or for  
36 perfecting, releasing, or satisfying a security interest or bona fide and reasonable fees paid  
37 to a person other than the creditor or an affiliate of the creditor for the following:

38           a. Fees for tax payment services;

39           b. Fees for flood certification;

40           c. Fees for pest infestation and flood determination;

41           d. Appraisal fees;

42           e. Fees for inspections performed prior to closing;

43           f. Credit reports;

44           g. Surveys;

45           h. Attorneys' fees, if the borrower has the right to select the attorney from an  
46 approved list or otherwise;

47           i. Notary fees;

48           j. Escrow charges, so long as not otherwise included under paragraph (a) of this  
49 subdivision;

50           k. Title insurance premiums; and

51           j. Fire and hazard insurance and flood insurance premiums, provided that the  
52 conditions in 12 C.F.R. 226.4(d)(2) are met.

53           (5) "Subprime loan", in the case of an adjustable rate loan secured by a first lien  
54 on a dwelling that can increase in interest rate but not decrease in interest rate below the  
55 fully indexed rate at the time of origination, a loan for which the annual percentage rate  
56 (APR) is greater than two percentage points above the yield on United States Treasury  
57 securities having comparable periods of maturity, as of the fifteenth day of the preceding  
58 month if the rate is set between the first and the fourteenth day of the month and as of the  
59 fifteenth day of the current month if the rate is set on or after the fifteenth day.

60 For all other loans secured by a first lien on a dwelling, subprime loan means a loan for  
61 which the APR is greater than three percentage points above the yield on United States  
62 Treasury securities having comparable periods of maturity, as of the fifteenth day of the  
63 preceding month if the rate is set between the first and the fourteenth day of the month and  
64 as of the fifteenth day of the current month if the rate is set on or after the fifteenth day.

65 For loans secured by a subordinate lien on a dwelling, subprime loan means a loan for  
66 which the APR is greater than five percentage points above the yield on United States  
67 Treasury securities having comparable periods of maturity, as of the fifteenth day of the  
68 preceding month if the rate is set between the first and the fourteenth day of the month and  
69 as of the fifteenth day of the current month if the rate is set on or after the fifteenth day.

70 For purposes of this section, the annual percentage rate has the meaning given in 12 C.F.R.  
71 226;

72           (6) "Total loan amount", the principal of the loan minus those points and fees as  
73 defined in subdivision (5) of this section that are included in the principal amount of the  
74 loan. For open-end loans, the total loan amount shall be calculated using the total line of  
75 credit allowed under the home loan at closing.

443.1001. Negative amortization occurs when the borrower's compliance with any  
2 repayment option offered under the terms of the residential mortgage loan is insufficient  
3 to satisfy the interest accruing on the loan, resulting in an increase in the loan balance.  
4 Negative amortization does not occur when a residential mortgage loan is originated,  
5 subsidized, or guaranteed by or through a state or local government, or nonprofit  
6 organization, and bears one or more of the following nonstandard payment terms that  
7 substantially benefit the borrower:

8           (a) Payments vary with income;

9           (b) Payments of principal and interest are deferred until the maturity date of the  
10 loan or the sale of the residence;

11           (c) Principal or interest is forgivable under specified conditions; or

12           (d) No interest or an annual interest rate of two percent or less is charged in  
13 connection with the loan.

**443.1002. 1. No creditor shall knowingly or intentionally engage in the unfair act  
2 or practice of flipping a home loan.**

3           **2. No creditor shall make, provide, or arrange for a home loan without verifying the  
4 borrower's reasonable ability to pay the scheduled payments of the following, as  
5 applicable:**

6           **(1) Principal;**

7           **(2) Interest;**

8           **(3) Real estate taxes;**

9           **(4) Homeowner's insurance;**

10          **(5) Assessments; and**

11          **(6) Mortgage insurance premiums.**

12

13 For loans in which the interest rate may vary, the reasonable ability to pay shall be  
14 determined based on a fully indexed rate and a repayment schedule that achieves full  
15 amortization over the life of the loan. For all home loans, the borrower's income and  
16 financial resources shall be verified by tax returns, payroll receipts, bank records, or other  
17 similarly reliable documents. Nothing in this section limits a creditor's ability to rely on  
18 criteria other than the borrower's income and financial resources to establish the  
19 borrower's reasonable ability to repay the residential mortgage loan, provided that the  
20 other criteria are verified through reasonably reliable methods and documentation. A  
21 statement by the borrower to the creditor of the borrower's income and resources shall not  
22 be sufficient to establish the existence of the income or resources when verifying the  
23 reasonable ability to pay.

24           **3. A creditor shall not enter into a subprime loan that contains a provision  
25 requiring or permitting the imposition of a penalty, fee, premium, or other charge in the  
26 event the residential mortgage loan is prepaid in whole or in part.**

27           **4. A creditor who makes, provides for, or arranges a subprime loan shall require  
28 the borrower to make a single aggregate payment each month that includes the interest and  
29 principal amounts agreed to by the borrower and the creditor, as well as equal monthly  
30 payments as will amortize the estimated amount of all taxes, water charges, special  
31 assessments, and fire and other hazard insurance premiums. The provisions of this**

32 subsection shall not apply to a subprime loan that is a subordinate lien when the taxes and  
33 insurance are escrowed through another home loan.

34       5. The first time a creditor orally informs a borrower of the anticipated or actual  
35 periodic payment amount for a first-lien residential mortgage loan which does not include  
36 an amount for payment of property taxes and hazard insurance, the creditor shall inform  
37 the borrower that an additional amount will be due for taxes and insurance and, if known,  
38 disclose to the borrower the amount of the anticipated or actual periodic payments for  
39 property taxes and insurance. This same oral disclosure shall be made each time the  
40 residential mortgage originator orally informs the borrower of a different anticipated or  
41 actual periodic payment change from the amount previously disclosed.

42       6. A creditor shall not make or cause to be made, directly or indirectly, any false,  
43 deceptive, or misleading statement or representation in connection with a home loan.

44       7. A creditor shall not make, publish, disseminate, circulate, place before the public,  
45 or cause to be made, directly or indirectly, any advertisement or marketing materials of  
46 any type, or any statement or representation relating to the business of home loans that is  
47 false, deceptive, or misleading.

48       8. No creditor shall make, provide, or arrange for a residential mortgage loan all  
49 or a portion of the proceeds of which are used to fully or partially pay off a special  
50 mortgage unless the borrower has obtained a written certification from an authorized  
51 independent loan counselor that the borrower has received counseling on the advisability  
52 of the loan transaction. For purposes of this section, "authorized independent loan  
53 counselor" means a nonprofit, third-party individual or organization providing home  
54 buyer education programs, foreclosure prevention services, mortgage loan counseling, or  
55 credit counseling, certified by the United States Department of Housing and Urban  
56 Development. For purposes of this section, "special mortgage" means a residential  
57 mortgage loan originated, subsidized, or guaranteed by or through a state, or local  
58 government, or nonprofit organization, that bears one or more of the following  
59 nonstandard payment terms which substantially benefit the borrower:

60       (1) Payments vary with income;

61       (2) Payments of principal and interest are not required or can be deferred under  
62 specified conditions;

63       (3) Principal or interest is forgivable under specified conditions;

64       (4) No interest or an annual interest rate of two percent or less is charged in  
65 connection with the loan.

66           **9. A creditor shall not make, arrange, or provide for a home loan that includes in**  
67 **the principal amount of the home loan all or any portion of any points and fees in an**  
68 **aggregate amount exceeding five percent of the total loan amount.**

69           **10. A creditor shall not make, arrange, or provide for a home loan that finances**  
70 **directly or indirectly:**

71           **(1) Credit life, credit disability, credit unemployment, or credit property insurance,**  
72 **or any other life or health insurance premiums;**

73           **(2) Any debt cancellation or suspension agreement, contract, or product; or**

74           **(3) Any product that is not necessary or related to the loan closing such as auto club**  
75 **membership or credit report monitoring.**

**443.1003. 1. A mortgage broker shall be considered to have created an agency**  
2 **relationship with the borrower in all cases and shall comply with the following duties:**

3           **(1) Mortgage brokers shall act in the borrower's best interest and in the utmost**  
4 **good faith toward borrowers and shall not compromise a borrower's right or interest in**  
5 **favor of another's right or interest, including a right or interest of the mortgage broker.**  
6 **A mortgage broker shall not accept, give, or charge any undisclosed compensation or**  
7 **realize any undisclosed remuneration, either through direct or indirect means, that inures**  
8 **to the benefit of the mortgage broker on an expenditure made for the borrower;**

9           **(2) Mortgage brokers shall carry out all lawful instructions given by borrowers;**

10           **(3) Mortgage brokers shall disclose to borrowers all material facts of which the**  
11 **mortgage broker has knowledge which might reasonably affect the borrower's rights,**  
12 **interests, or ability to receive the borrower's intended benefit from the residential**  
13 **mortgage loan, but not facts which are reasonably susceptible to the knowledge of the**  
14 **borrower;**

15           **(4) Mortgage brokers shall use reasonable care in performing duties; and**

16           **(5) Mortgage brokers shall account to a borrower for all the borrower's money and**  
17 **property received as agent.**

18           **2. Nothing in this section prohibits a mortgage broker from contracting for or**  
19 **collecting a fee for services rendered and which had been disclosed to the borrower in**  
20 **advance of the provision of such services.**

21           **3. Nothing in this section requires a mortgage broker to obtain a loan containing**  
22 **terms or conditions not available to the mortgage broker in the mortgage broker's usual**  
23 **course of business, or to obtain a loan for the borrower from a mortgage lender with whom**  
24 **the mortgage broker does not have a business relationship.**

**443.1004. A borrower injured by a violation of the standards, duties, prohibitions, or requirements of sections 443.1000 to 443.1004 shall have a private right of action, and the court shall award:**

- (1) Actual, incidental, and consequential damages;**
- (2) Statutory damages equal to two times the amount of all lender fees included in the amount of the principal of the residential mortgage loan;**
- (3) Punitive damages if the violation was malicious or reckless; and**
- (4) Court costs and reasonable attorneys' fees.**

**443.1005. Notwithstanding the provisions of section 443.1000, nothing in sections 443.1000 to 443.1005 shall apply to a state or federally chartered bank, savings bank, or credit union, an institution chartered by Congress under the Farm Credit Act, or to a person making, providing, or arranging a residential mortgage loan originated or purchased by a state agency or local unit of government. Sections 443.1000 to 443.1005 shall not apply to a lender licensed and regulated by the division of finance within the department of insurance, financial institutions, and professional registration, a financial institution as defined in subdivision (9) of subsection 1 of section 443.803, or a mortgage banker as defined in subdivision (19) of subsection 1 of section 443.803.**

**443.1006. 1. A person commits the crime of residential mortgage fraud if such person:**

**(1) Knowingly makes or causes to be made any deliberate and material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process; or**

**(2) Knowingly uses or facilitates the use of any deliberate and material misstatement, misrepresentation, or omission, knowing the same to contain a material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.**

**2. As used in this section, "mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications**

19 of income and employment, bank statements, tax returns, and payroll stubs; and any  
20 required disclosures.

21 3. The crime of residential mortgage fraud is a class D felony.

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