A bill for an act
relating to mortgages; providing for the Minnesota Subprime Foreclosure Extension Act; proposing coding for new law in Minnesota Statutes, chapter 583.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[583.33] CITATION.**

Sections 583.33 to 583.40 shall be cited as the "Minnesota Subprime Foreclosure Extension Act of 2008."

Sec. 2. **[583.34] DEFINITIONS.**

Subdivision 1. **Scope.** For purposes of sections 583.33 to 583.40, the terms defined in this section have the meanings given to them.

Subd. 2. **The act.** "The act" means the Minnesota Subprime Foreclosure Extension Act of 2008.

Subd. 3. **Extension payment.** "Extension payment" means the monthly amount that is due to the foreclosing lender by an eligible foreclosed borrower under section 538.37 to maintain the right to extension.

Subd. 4. **Extension period.** "Extension period" means the period that begins on the effective date of the act and expires one year following the effective date of the act.

Subd. 5. **Extension right.** "Extension right" means the relief provided to an eligible foreclosed borrower in section 583.35.

Subd. 6. **Eligible foreclosed loan.** "Eligible foreclosed loan" means a residential mortgage loan currently subject to a pending foreclosure sale under chapter 580 or 581 for which: (1) the closing of the loan occurred after January 1, 2001, and prior to August 1, 2007; and (2) either is a subprime loan, or is a loan with negative amortization for which the required minimum payment of principal and interest increased after the date the loan was originated.

Subd. 7. **Eligible foreclosed borrower.** "Eligible foreclosed borrower" means a borrower who: (1) is a mortgagor under an eligible foreclosed loan; and (2) resides at the mortgaged property and intends to reside at the mortgaged property at least until the end of the extension period.

Subd. 8. **Foreclosing lender.** "Foreclosing lender" means the mortgagee who is foreclosing the mortgage of an eligible foreclosed borrower.

Subd. 9. **Minnesota Residential Mortgage Originator and Servicer Licensing Act definitions.** The following terms defined in section 58.02 have the same meanings for purposes of sections 583.33 to 583.40: "residential mortgage loan"; "residential mortgage servicer or servicer"; "residential real property" or "residential real estate"; "subprime loan"; "negative amortization" and "fully indexed rate."

Sec. 3. **[583.35] RIGHT TO FORECLOSURE EXTENSION.**

An eligible foreclosed borrower has the right to extend a foreclosure sale under chapter 580 or 581 until the expiration of the extension period by providing an affidavit of extension to the foreclosing lender in accordance with section 583.36. A foreclosing lender shall rescind notice of a foreclosure sale if the eligible foreclosed borrower has submitted to the foreclosing lender an affidavit of extension prior to or at the time of the foreclosure sale. Upon expiration of the extension period or the loss of the extension under section 583.37, subdivision 4, a foreclosing lender may schedule an extended foreclosure sale by publishing the notice of foreclosure sale once in the newspaper in which the original advertisement was published and by serving a copy of the notice of foreclosure sale in a like manner as a summons in a civil action in the district court upon the person in possession of the mortgaged premises at least four weeks prior to the sale.

Sec. 4. **[583.36] AFFIDAVIT OF EXTENSION.**

Subdivision 1. **Affidavit of extension.** The affidavit of extension shall state the name of the eligible foreclosed borrower, the address of the property in foreclosure, and contain the following statements:

"(1) I am the borrower on a mortgage loan on residential property located at [address of property] (hereinafter "subject property");

(2) A foreclosure sale has been scheduled on the subject property;

(3) I currently reside at the subject property;

(4) If permitted to reside at the subject property, I intend to reside at the subject property until at least [end of extension period];

(5) I believe that the mortgage loan on the subject property is either:

(i) a subprime loan; or

(ii) a loan with negative amortization for which the required minimum payment has increased."

The affidavit shall be signed by at least one eligible foreclosed borrower who is the mortgagor of the residential real property being foreclosed.

Subd. 2. **Service on foreclosing lender.** A foreclosing lender shall accept the affidavit of extension if delivered through any reasonable means to the mortgagee or counsel for the mortgagee identified in the notice of foreclosure. Reasonable means of delivery include, but are not limited to, delivery in person to any agent or employee of the mortgagee or counsel for the mortgagee, or delivery by United States mail or other reliable delivery service to the address of the mortgagee or counsel for the mortgagee in the notice of foreclosure, in the notice of right to extension required by section 583.39, or at the address of the registered agent with the secretary of state. Notwithstanding the above, a sheriff conducting a foreclosure sale shall accept an affidavit of extension, deliver it to the foreclosing lender, and cancel the foreclosure sale.

Subd. 3. **Acknowledgment by foreclosing lender.** The foreclosing lender shall promptly provide to the eligible foreclosed borrower a written acknowledgment that it has received the affidavit of extension. The acknowledgment shall state the following:

(1) that the foreclosure sale has been canceled;

(2) the extension payment amount that is due by the eligible foreclosed borrower;

(3) the date that the first extension payment is due;

(4) the date that each subsequent extension payment is due; and

(5) the address to which the borrower should send the extension or the payment delivery methods that are acceptable to the foreclosing lender. The acknowledgment shall be on a single sheet of paper, shall use plain language, and no other documents shall be included with the acknowledgment. The bottom of the acknowledgment shall include the following disclosure in bold, 14-point type:

The cancellation of the foreclosure sale on your property is the result of a law passed by the Minnesota Legislature in 2008. You must make the monthly payment in full by the due dates listed in this letter. If you do not make the payments on time, we will have the right to schedule a foreclosure sale on your property.

Subd. 4. **Criminal penalty for knowing misrepresentation.** A person who makes a knowing material misrepresentation in an affidavit of extension is guilty of a crime and may be sentenced to imprisonment for not more than two years or the payment of a fine of not more than $2,000, or both.

Subd. 5. **Charges prohibited.** A foreclosing lender shall not charge an eligible foreclosed borrower any amount other than the extension payment for exercising the extension right.

Sec. 5. **[583.365] GOOD FAITH NEGOTIATIONS.**

In the event the homeowner files the affidavit described in section 583.36 to extend the foreclosure, the holder of the mortgagee's interest may bring an action in court to proceed with the foreclosure if it can prove, by clear and convincing evidence, that it has proceeded with good faith negotiations and the holder of the mortgagor's interest has not acted in good faith.

The mortgagee's interest must show that it has, at the very least, offered terms similar to the terms that would be given to bankruptcy filers under the "cramdown" provisions of the bankruptcy act. The mortgagee's interest must also show it negotiated and offered at least as good terms as for a HUD mortgage at the income level of the mortgagor's interest. In all cases, a foreclosing lender must pay reasonable attorney fees.

Sec. 6. **[583.37] BORROWER PAYMENT REQUIREMENT.**

Subdivision 1. **Borrower payment required.** An eligible foreclosed borrower who has an extension right shall make monthly payments to the foreclosing lender. The payment shall be made no later than the 15th day of each month. The first payment is not due until the 15th day of the month that is a minimum of 30 days after the date that the foreclosing lender sends the acknowledgment required by section 583.36, subdivision 3.

Subd. 2. **Amount of payment.** For an eligible foreclosed borrower with a subprime loan, the amount of payment would be the lesser of: (1) the minimum monthly payment on the date the loan was originated; or (2) 65 percent of the minimum monthly payment at the time the borrower defaulted prior to foreclosure. For an eligible foreclosed borrower with a negative amortization loan that is not also a subprime loan, the amount of payment would be the minimum monthly payment on the date the loan was originated.

Subd. 3. **Payment advice notice.** The foreclosing lender shall provide to the eligible foreclosed borrower monthly written payment advice notices. The notice shall be sent by the first day of each month until the expiration of the extension period or the loss of the extension under subdivision 4. Each notice shall state (1) the amount of payment owed from the eligible foreclosed borrower; and (2) the date that the payment must be received to avoid loss of the extension right under subdivision 4. The payment advice notice shall be on a single sheet of paper, shall use plain language, and no other documents shall be included with the notice. The bottom of the notice shall include the following disclosure in bold, 14-point type:

The extension of the foreclosure sale on your property is the result of a law passed by the Minnesota Legislature in 2008. You must continue to make the monthly payment in full by the 15th day of each month. If you do not make the payments on time, we will have the right to schedule a foreclosure sale on your property. The extension period will end on (last day of extension period).

Subd. 4. **Borrower failure to pay.** An eligible foreclosed borrower who fails to make payments in the amount required and by the date required under this section shall lose the extension right.

Sec. 7. **[583.38] RESOLUTION OF DISPUTES.**

Subdivision 1. **Dispute as to eligible foreclosed loan status.** If the foreclosing lender determines after a reasonable investigation and in good faith that the person submitting an affidavit of extension is not the mortgagor under an eligible foreclosed loan, the foreclosing lender shall provide a notice of denial of extension to the person submitting the affidavit of extension. The foreclosing lender must send a notice of denial by certified mail through the United States mail within five business days of receiving the affidavit of extension. The notice of denial shall be on a single sheet of paper and no other documents shall be included with the notice. Such notice must include an explanation, in plain language, of the reasons that the loan is not an eligible foreclosed loan. Such notice must also inform the person who executed the affidavit of extension that the person has the right to apply to the court for an order extending the foreclosure sale.

Subd. 2. **Other disputes.** For any other dispute about the extension right or other rights or requirements under the act, a person can apply to the district court in the county where the property is located for an order establishing the rights of the parties to the dispute.

Sec. 8. **[583.39] NOTICE OF RIGHT TO EXTENSION.**

Subdivision 1. **Notice requirement; form and delivery of notice.** Every foreclosing lender shall send to an eligible foreclosed borrower a notice of right to extension. The notice of right to extension shall be in the form of, and subject to the delivery requirements specified in, section 580.041, subdivision 1b. The notice of right to extension must also indicate an address at which the foreclosing lender will accept service of an affidavit of extension under section 583.36, subdivision 2. The terms of section 580.041, subdivisions 3 and 4, apply to this section. Notwithstanding the above, a foreclosing lender must within three days after the first day of the extension period send the notice of right to extension to eligible foreclosed borrowers who have a foreclosure sale scheduled within 20 days of the first day of the extension period, and must within 14 days after the first day of the extension period send the notice of right to extension to all other eligible foreclosed borrowers in foreclosure at the beginning of the extension period.

Subd. 2. **Content.** The notice required by this section must appear substantially as follows:

"Emergency Foreclosure Extension: Help For Homeowners in Foreclosure

You may be eligible to have the foreclosure sale of your home canceled until at least (end of extension period).

The state of Minnesota recently passed a law which allows some borrowers to extend a pending foreclosure sale. To qualify for this foreclosure extension, you must meet all of the following requirements:

- Have a "subprime" loan or a "negative amortization" loan.
- Currently reside at the mortgaged property and intend to reside at the mortgaged property for at least the next 12 months.
- Obtained the loan between January 1, 2001, and prior to August 1, 2007.

If you meet those qualifications and you choose to seek foreclosure extension, you will need to complete and sign an affidavit that you are eligible for extension and provide that affidavit to us at the following address: (insert address in the state of Minnesota).

The state encourages you to become informed about your options and the requirements for obtaining foreclosure extension. There are government agencies and nonprofit organizations that you may contact for help completing an affidavit to seek foreclosure extension. For the name and telephone number of an organization near you please call the Minnesota Housing Finance Agency (MHFA) at (insert telephone number/Web site). The state does not guarantee the advice of these agencies.

Do not delay dealing with the foreclosure because your options for foreclosure extension end with the foreclosure sale."

Sec. 9. **[583.40] BAD FAITH OR RECKLESS VIOLATION.**

A foreclosing lender who acts in bad faith or recklessly in violation of sections 583.35 to 583.39 shall be liable to a person injured by the violation for actual damages, statutory damages of up to $25,000, punitive damages in an amount determined by the court, costs, and reasonable attorney fees.

Sec. 10. **FORECLOSURE AFTER EXTENSION.**

If a period of extension has been granted under this act and that period has ended for any reason, the lender may commence a new foreclosure. The new foreclosure may begin publication of the notice of foreclosure four weeks prior to the scheduled sale and shall publish for two weeks, the last publication being at least one week prior to the sale. The redemption period after the sale is six weeks.

Sec. 11. **EFFECTIVE DATE.**

Sections 1 to 10 are effective the day following final enactment.