

111TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Helping Families Save  
5 Their Homes in Bankruptcy Act of 2009”.

6 **SEC. 2. ELIGIBILITY FOR RELIEF.**

7 Section 109 of title 11, United States Code, is  
8 amended—

9 (1) by adding at the end of subsection (e) the  
10 following: “For purposes of this subsection, the com-

1       putation of debts shall not include the secured or  
2       unsecured portions of—

3               “(1) debts secured by the debtor’s principal res-  
4       idence if the current value of that residence is less  
5       than the secured debt limit; or

6               “(2) debts secured or formerly secured by real  
7       property that was the debtor’s principal residence  
8       that was sold in foreclosure or that the debtor sur-  
9       rendered to the creditor if the current value of such  
10      real property is less than the secured debt limit.”;  
11      and

12              (2) by adding at the end of subsection (h) the  
13      following:

14      “(5) The requirements of paragraph (1) shall not  
15      apply in a case under chapter 13 with respect to a debtor  
16      who submits to the court a certification that the debtor  
17      has received notice that the holder of a claim secured by  
18      the debtor’s principal residence may commence a fore-  
19      closure on the debtor’s principal residence.”.

20      **SEC. 3. PROHIBITING CLAIMS ARISING FROM VIOLATIONS**  
21                      **OF CONSUMER PROTECTION LAWS.**

22      Section 502(b) of title 11, United States Code, is  
23      amended—

24              (1) in paragraph (8) by striking “or” at the  
25      end,

1           (2) in paragraph (9) by striking the period at  
2           the end and inserting “; or”, and

3           (3) by adding at the end the following:

4           “(10) the claim is subject to any remedy for  
5           damages or rescission due to failure to comply with  
6           any applicable requirement under the Truth in  
7           Lending Act, or any other provision of applicable  
8           State or Federal consumer protection law that was  
9           in force when the noncompliance took place, notwith-  
10          standing the prior entry of a foreclosure judgment.”.

11 **SEC. 4. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

12          Section 1322(b) of title 11, United States Code, is  
13          amended—

14               (1) by redesignating paragraph (11) as para-  
15               graph (12),

16               (2) in paragraph (10) by striking “and” at the  
17               end, and

18               (3) by inserting after paragraph (10) the fol-  
19               lowing:

20               “(11) notwithstanding paragraph (2) and other-  
21               wise applicable nonbankruptcy law, with respect to a  
22               claim for a loan secured by a security interest in the  
23               debtor’s principal residence that is the subject of a  
24               notice that a foreclosure may be commenced, modify  
25               the rights of the holder of such claim—

1           “(A) by providing for payment of the  
2 amount of the allowed secured claim as deter-  
3 mined under section 506(a)(1);

4           “(B) if any applicable rate of interest is  
5 adjustable under the terms of such security in-  
6 terest by prohibiting, reducing, or delaying ad-  
7 justments to such rate of interest applicable on  
8 and after the date of filing of the plan;

9           “(C) by modifying the terms and condi-  
10 tions of such loan—

11           “(i) to extend the repayment period  
12 for a period that is no longer than the  
13 longer of 40 years (reduced by the period  
14 for which such loan has been outstanding)  
15 or the remaining term of such loan, begin-  
16 ning on the date of the order for relief  
17 under this chapter; and

18           “(ii) to provide for the payment of in-  
19 terest accruing after the date of the order  
20 for relief under this chapter at an annual  
21 percentage rate calculated at a fixed an-  
22 nual percentage rate, in an amount equal  
23 to the then most recently published annual  
24 yield on conventional mortgages published  
25 by the Board of Governors of the Federal

1 Reserve System, as of the applicable time  
2 set forth in the rules of the Board, plus a  
3 reasonable premium for risk; and

4 “(D) by providing for payments of such  
5 modified loan directly to the holder of the  
6 claim; and”.

7 **SEC. 5. COMBATING EXCESSIVE FEES.**

8 Section 1322(c) of title 11, the United States Code,  
9 is amended—

10 (1) in paragraph (1) by striking “and” at the  
11 end,

12 (2) in paragraph (2) by striking the period at  
13 the end and inserting a semicolon, and

14 (3) by adding at the end the following:

15 “(3) the debtor, the debtor’s property, and  
16 property of the estate are not liable for a fee, cost,  
17 or charge that is incurred while the case is pending  
18 and arises from a debt that is secured by the debt-  
19 or’s principal residence except to the extent that—

20 “(A) the holder of the claim for such debt  
21 files with the court (annually or, in order to  
22 permit filing consistent with clause (ii), at such  
23 more frequent periodicity as the court deter-  
24 mines necessary) notice of such fee, cost, or  
25 charge before the earlier of—

1                   “(i) 1 year after such fee, cost, or  
2 charge is incurred; or

3                   “(ii) 60 days before the closing of the  
4 case; and

5                   “(B) such fee, cost, or charge—

6                   “(i) is lawful under applicable non-  
7 bankruptcy law, reasonable, and provided  
8 for in the applicable security agreement;  
9 and

10                   “(ii) is secured by property the value  
11 of which is greater than the amount of  
12 such claim, including such fee, cost, or  
13 charge;

14                   “(4) the failure of a party to give notice de-  
15 scribed in paragraph (3) shall be deemed a waiver  
16 of any claim for fees, costs, or charges described in  
17 paragraph (3) for all purposes, and any attempt to  
18 collect such fees, costs, or charges shall constitute a  
19 violation of section 524(a)(2) or, if the violation oc-  
20 curs before the date of discharge, of section 362(a);  
21 and

22                   “(5) a plan may provide for the waiver of any  
23 prepayment penalty on a claim secured by the debt-  
24 or’s principal residence.”.

1 **SEC. 6. CONFIRMATION OF PLAN.**

2 Section 1325(a) of title 11, the United States Code,  
3 is amended—

4 (1) in paragraph (8) by striking “and” at the  
5 end,

6 (2) in paragraph (9) by striking the period at  
7 the end and inserting a semicolon, and

8 (3) by inserting after paragraph (9) the fol-  
9 lowing:

10 “(10) notwithstanding subclause (I) of para-  
11 graph (5)(B)(i), the plan provides that the holder of  
12 a claim whose rights are modified pursuant to sec-  
13 tion 1322(b)(11) retain the lien until the later of—

14 “(A) the payment of such holder’s allowed  
15 secured claim; or

16 “(B) discharge under section 1328; and

17 “(11) the plan modifies a claim in accordance  
18 with section 1322(b)(11), and the court finds that  
19 such modification is in good faith.”.

20 **SEC. 7. DISCHARGE.**

21 Section 1328 of title 11, the United States Code, is  
22 amended—

23 (1) in subsection (a)—

24 (A) by inserting “(other than payments to  
25 holders of claims whose rights are modified

1 under section 1322(b)(11)” after “paid” the  
2 1st place it appears, and

3 (B) in paragraph (1) by inserting “or, to  
4 the extent of the unpaid portion of an allowed  
5 secured claim, provided for in section  
6 1322(b)(11)” after “1322(b)(5)”, and

7 (2) in subsection (c)(1) by inserting “or, to the  
8 extent of the unpaid portion of an allowed secured  
9 claim, provided for in section 1322(b)(11)” after  
10 “1322(b)(5)”.

11 **SEC. 8. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

12 (a) EFFECTIVE DATE.—Except as provided in sub-  
13 section (b), this Act and the amendments made by this  
14 Act shall take effect on the date of the enactment of this  
15 Act.

16 (b) APPLICATION OF AMENDMENTS.—The amend-  
17 ments made by this Act shall apply with respect to cases  
18 commenced under title 11 of the United States Code be-  
19 fore, on, or after the date of the enactment of this Act.