

Act No. 14
Public Acts of 1991
Approved by the Governor
April 25, 1991
Filed with the Secretary of State
April 25, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Senator Cruce

ENROLLED SENATE BILL No. 111

AN ACT to amend sections 1, 2, 4, 7, 8, 10, 11, 12, 12a, 13, 13a, 14, 19, and 21 of Act No. 21 of the Public Acts of 1939, entitled as amended "An act to define and regulate the business of making regulatory loans; to permit the licensing of persons engaged in that business; to authorize licensees to make charges at a greater rate than unlicensed lenders; to prescribe maximum rates of charge which licensees are permitted to make; to regulate the advertising of the business of making regulatory loans; to authorize credit life insurance and to permit charges for that insurance; to prohibit assignments of wages or salaries, earned or to be earned, when given as security for a loan or as consideration for a payment of a regulatory loan; to provide for the administration of this act and for the promulgation of rules; to authorize the making of examinations and investigations and the publication of reports of examinations and investigations; to provide for a review of decisions and findings of the commissioner of the financial institutions bureau under this act; and to prescribe penalties," section 1 as amended by Act No. 162 of the Public Acts of 1988 and section 11 as amended by Act No. 103 of the Public Acts of 1983, being sections 493.1, 493.2, 493.4, 493.7, 493.8, 493.10, 493.11, 493.12, 493.12a, 493.13, 493.13a, 493.14, 493.19, and 493.21 of the Michigan Compiled Laws; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 1, 2, 4, 7, 8, 10, 11, 12, 12a, 13, 13a, 14, 19, and 21 of Act No. 21 of the Public Acts of 1939, section 1 as amended by Act No. 162 of the Public Acts of 1988 and section 11 as amended by Act No. 103 of the Public Acts of 1983, being sections 493.1, 493.2, 493.4, 493.7, 493.8, 493.10, 493.11, 493.12, 493.12a, 493.13, 493.13a, 493.14, 493.19, and 493.21 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 1. (1) A person shall not engage in the business of making loans of money, credit, goods, or things in action in an amount or of a value included within the regulatory loan ceiling and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee except as authorized by this act and without first obtaining a license from the commissioner for each location at which the business is to be conducted under this act, or by obtaining a license under the consumer financial services act, Act No. 161 of the Public Acts of 1988, being sections 487.2051 to 487.2072 of the Michigan Compiled Laws.

(2) As used in this act:

(a) "Person" includes individuals, partnerships, associations, and corporations unless the context requires a different meaning.

(b) "Licensee" means a person, partnership, association, or corporation to whom or which 1 or more licenses have been issued.

(c) "License" means a single license issued with respect to a single place of business.

(d) "Liquid assets" means cash, unrestricted deposits in banks, and readily marketable securities at their then market value.

(e) "Assets" means cash, unrestricted deposits in banks, readily marketable securities at their then market value, collectible loans made in accordance with this act and personal property acquired in the general conduct of business transacted under this act.

(f) "Regulatory loan ceiling" means \$8,000.00.

(g) "Commissioner" means the commissioner of the financial institutions bureau of the department of commerce.

(h) "Advertising" means publishing or broadcasting, or causing to be published or broadcast, material which has been prepared for public distribution by means of newspapers, magazines, or electronic media. Advertising does not include a stockholder communication, such as an annual report, interim financial report, registration statement, security, prospectus, application for listing a security on a stock exchange, or proxy materials, nor does it include a communication addressed to a person who has previously executed a loan agreement relative to that person's account.

Sec. 2. (1) Application for each license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the address, both of the residence and place of business, of the applicant, if the applicant is a copartnership or association, of every member, and if a corporation, of each officer and director; also the county and municipality with street and number, if any, where the business is to be conducted and all further relevant information as the commissioner may require. The applicant at the time of making each application shall pay to the commissioner the sum of \$300.00 as a fee for investigating the application and the additional sum of \$300.00 as an annual license fee for a period terminating on December 31 of the current calendar year. If the application is filed after June 30 in any year the additional sum shall be only \$150.00 as the license fee in addition to the fee for investigation.

(2) Every applicant shall also prove, in form satisfactory to the commissioner, that he or she has available for the operation of the business at the location specified in the application, liquid assets of at least \$50,000.00.

Sec. 4. (1) Upon the filing of the application, the payment of the fees, and the approval of the bond, the commissioner shall investigate the facts and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant, of the members if the applicant is a copartnership or association, and of the officers and directors if the applicant is a corporation are such as to command the confidence of the community and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act and that the applicant has available for the operation of the business at the specified location liquid assets in the amounts specified in section 2, the foregoing facts being conditions precedent to the issuance of a license under this act, he or she shall issue and deliver a license to the applicant to make loans in accordance with the provisions of this act at the location specified in the application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended. If the commissioner finds that the applicant fails to meet the requirements of this section, he or she shall not issue a license and shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the \$300.00 investigation fee to cover the costs of investigating the application. The commissioner shall approve or deny every application for license within 60 days from the application's filing with the fees and the approved bond.

(2) If the application is denied, the commissioner shall within 20 days from the date of denial file with the financial institutions bureau a written transcript of evidence and a decision and findings with respect to the denial containing the evidence and the reasons supporting the denial and shall serve upon the applicant a copy of the filing.

Sec. 7. (1) No more than 1 place of business shall be maintained under the same license but the commissioner may issue more than 1 license to the same licensee upon compliance with all the provisions of this act governing an original issuance of a license for each new license.

(2) If a licensee desires to change a licensed place of business to a street address other than that designated in the license, he or she shall give written notice to the commissioner who shall indicate his or her approval of the change and the date by the issuance of a new license which shall be authority for the operation of the business under the license at the new location.

(3) The licensee at the time of giving written notice to change the street address or change the name of the licensee shall pay to the commissioner the sum of \$10.00.

Sec. 8. Every licensee, on or before December 22 of each year, shall pay to the commissioner the sum of \$300.00 for each license held by him or her, as an annual license fee, and at the same time file with the commissioner a bond for each license held by him or her in the same amount and of the same character as required by section 3. This section shall not apply to any licensee who shall surrender his or her license and discontinue the business of making loans as authorized by this act.

Sec. 10. (1) For the purpose of discovering violations of this act or securing information lawfully required by him or her hereunder, the commissioner may at any time, either personally or by a person or persons duly designated by him or her, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person who or which shall be engaged in the business described in section 1 of this act, whether the person shall act or claim to act as principal or agent, or under or without the authority of this act. For that purpose the commissioner and his or her duly designated representatives shall have and be given free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated by him or her shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony the commissioner may require relative to such loans or such business or to the subject matter of any examination, investigation, or hearing.

(2) At least once during every 2-year period, the commissioner shall examine the books, accounts, records, and files of a licensee. A licensee shall pay a fee for an examination of its records conducted by the commissioner at a rate of not less than \$20.00 per hour or more than \$40.00 per hour for each examiner engaged in an examination.

(3) The examination fee shall be invoiced upon the completion of the examination and shall be due and payable upon receipt of the invoice by the licensee. A licensee shall not be required to pay for more than 1 examination fee in a calendar year.

(4) This section shall not be construed to prohibit the keeping of records by electronic data processing methods.

(5) The commissioner may maintain a cause of action in the court of claims to recover any fees a licensee fails to pay.

(6) All fees collected under this section shall be paid into the state treasury and credited to the financial institutions bureau.

Sec. 11. (1) The licensee shall keep and use in the licensee's business the books, accounts, and records the commissioner may require in order to determine whether the licensee is complying with the provisions of this act and with the rules promulgated by the commissioner pursuant to this act. The licensee shall preserve within this state and make accessible to the commissioner, the books, accounts, and records, including cards used in the card system, if any, for at least 2 years after making the final entry on any loan recorded in the books, accounts, and records. Books and accounts may be kept at a location other than the licensee's principal place of business, provided that they are made available to the commissioner upon request and the licensee pays the actual and reasonable travel expenses if the examiner must travel out of state.

(2) The licensee shall file, annually on or before February 15 of each year, with the commissioner its financial statement in a uniform format prescribed by the commissioner, including information on earnings, for the prior calendar year.

(3) The licensee shall file, on or before March 15, 1990, and every third year thereafter, a report with the commissioner giving all relevant information as the commissioner reasonably may require concerning the business and operations during the preceding 3-year period of each licensed place of business conducted by the licensee within this state. A report filed under this subsection is exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws, except if the commissioner finds that disclosure of a report would be in the public interest.

(4) All reports shall be made under oath and shall be in the form prescribed by the commissioner.

(5) The commissioner shall make and publish annually an analysis and recapitulation of the reports filed pursuant to subsections (2) and (3).

Sec. 12. (1) A licensee or other person shall not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever a false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in an amount or of a value included within the regulatory loan ceiling at a greater rate of charge than lenders not licensed under this act would be permitted by law to make; or, in the case of a licensee, any statement or representation which refers to the supervision of the business by this state or a department or official of this state except with the approval of the commissioner. The commissioner may order a licensee to desist from conduct which the commissioner finds is a violation of this section.

(2) The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in a manner the commissioner considers necessary to prevent misunderstanding by prospective borrowers.

(3) A licensee shall not take a lien upon real estate as security for a loan made under this act, except a lien acquired by execution or otherwise after the entry of a judgment.

(4) A licensee shall not conduct the business of making loans under this act within an office, room, suite, or place of business in which any other business is solicited or engaged in, or in association or conjunction with the business, if the commissioner finds, after 5 days' written notice and after a hearing that the other business is of such a nature that the conduct has concealed or facilitated evasion of this act or of the general rules lawfully made under this act, and shall order the licensee in writing to desist from that conduct, but the order shall not be made by the commissioner unless the commissioner finds that the other business has been so conducted at that particular location that it has concealed or facilitated evasion of this act.

(5) A licensee shall not transact business or make a loan provided for by this act under any other name or at any other place of business within this state than that named in the license, unless it is also an office of the licensee duly licensed under this act. This subsection shall not be construed to prohibit a licensee from transacting business or making a loan by mail.

(6) A licensee shall not take a confession of judgment or a power of attorney to appear or to confess judgment on behalf of a borrower. A licensee shall not take a note or evidence of indebtedness that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, or an instrument in which blanks are left to be filled in after execution.

(7) A licensee shall not discriminate against a person in the extension of credit on the basis of sex or marital status.

Sec. 12a. (1) False, misleading, deceptive, or irresponsible advertising is unlawful and is defined as follows:

(a) Advertising which lures, entices, induces, or tends to induce a person to incur a debt by unreasonably minimizing the consequences of assuming a legal repayment obligation or by depicting the assumption of a debt obligation as a frivolous transaction.

(b) Advertising that describes or depicts the benefits or advantages of having the money from a loan, without describing or depicting the obligation of repaying the loan with interest.

(c) Advertising with claims and representations that are not accurate or provable.

(d) Advertising which misrepresents facts or creates misleading impressions.

(e) Advertising which contains a statement which, though true, implies an untruth.

(f) Advertising which uses the phrase "lowest rates", "lowest rates in the city", or similar phrases unless the rates are actually lower than those of other lenders.

(g) Advertising which uses the phrase "new reduced rates", "new low rates", "reduced rates", or similar phrases for more than 60 days after the changed rates become effective.

(h) Advertising which causes a probability of confusion or misunderstanding as to the legal rights, obligations, or remedies of a lender, or as to the terms or conditions of credit.

(i) Advertising which represents that a borrower will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(j) Advertising which suggests or infers that a loan is not a loan, or that interest is not charged, or that the borrower is not under an obligation to repay.

(2) A licensee shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to applicants who meet the standards or qualifications prescribed.

Sec. 13. (1) A licensee may lend money in an amount not to exceed the regulatory loan ceiling and may contract for, compute, and receive interest charges on the loan at a rate not to exceed 22% per annum on the unpaid balance. The rate for a loan that is made for the purchase of a motor vehicle shall not exceed the rate provided for that class of vehicle in section 18 of the motor vehicle sales finance act, Act No. 27 of the Public Acts of the Extra Session of 1950, being section 492.118 of the Michigan Compiled Laws. The rates charged under this act shall be a fixed rate that shall not be increased during the term of the loan contract.

(2) A licensee shall not induce or permit a person to become obligated, directly under more than 1 contract of loan at the same time.

(3) Charges on loans made under this act shall not be paid, deducted, or received in advance, or compounded. All charges on loans made under this act shall be computed on the unpaid principal balance or portions of the balance, shall be so expressed in every obligation signed by the borrower, and shall be computed on the basis of the number of days actually elapsed.

(4) In addition to the interest and charges provided for in this act, a loan processing fee not to exceed 2% of the principal, up to \$40.00, may be charged for each loan made, and may be included in the principal of the loan. A licensee shall not induce or permit a person to become obligated, directly or contingently, under more

than 1 loan contract at the same time for the purpose or with the result of obtaining a loan processing fee not otherwise permitted by this section. No further or other amount shall not be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to a public officer, for filing, recording, or releasing in a public office a financing statement, an instrument securing the loan, or both, and for noting and releasing a lien or transferring a certificate of title under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws, which fees may be collected when the loan is made, or at any time thereafter.

(5) A licensee shall not receive a loan processing fee for either of the following:

(a) A loan contract that is renegotiated, renewed, or modified.

(b) A loan contract that is issued to obligate a person to repay a sum of money that was previously lent to a person through a prior loan contract by the licensee.

(6) A handling fee of \$5.00 may be charged by the licensee for the return of an unpaid and dishonored check, draft, negotiable order, or similar instrument given to the licensee in full or partial repayment of a loan.

(7) If an amount other than or in excess of the charges permitted by this act is charged, contracted for, or received, other than by a bona fide clerical error, the contract of loan shall be void and the licensee shall not have a right to collect or receive any principal, charges, or recompense whatsoever.

Sec. 13a. At the option of the borrower, a licensee may obtain or provide credit life insurance on the life of the borrower, but only 1 of them if there are 2 or more obligors, pursuant to the credit insurance act, Act No. 173 of the Public Acts of 1958, as amended, being sections 550.601 to 550.624 of the Michigan Compiled Laws, and may deduct from the principal of a loan and retain an amount equal to the premium lawfully charged by the insurance company. The insurance permitted by this section shall be in force when the loan is made. If the borrower obtains the insurance from or through a licensee, the statement required by section 14 shall show the cost of the insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate or other evidence of the insurance. This act shall not prohibit the licensee or any employee, affiliate, subsidiary, or associate of the licensee from collecting the premium or identifiable charge for life insurance permitted by this section and from receiving and retaining any gain or other benefit resulting from the insurance. A licensee shall not require the purchase of insurance as a condition precedent to the making of a loan.

Sec. 14. A licensee shall:

(a) Deliver to the borrower a disclosure statement in compliance with regulation Z, 12 C.F.R. part 226.

(b) Give to the borrower a plain and complete receipt for cash payments made on account of a loan at the time the payments are made, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of the loan. An unitemized receipt may be given temporarily and within 30 days a receipt as prescribed above delivered or mailed.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time during regular business hours, but the licensee may apply that payment first to all charges in full at the agreed rate up to the date of the payment.

(d) Upon repayment of the loan in full, mark plainly every obligation and security signed by the borrower with the word "Paid" or "Canceled", and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower.

(e) Display in each licensed place of business a full and accurate schedule of the maximum charges authorized by this act to be made upon loans of all classes and the method of computing the charges.

Sec. 19. (1) A person and the several members, officers, directors, agents, and employees thereof, who violate or participate in the violation of section 1, 12, 13, 14, or 18 are guilty of a misdemeanor, punishable by a fine of not more than \$500.00, or imprisonment for not more than 6 months, or both.

(2) A person who enters into any contract of loan not invalid for any other reason, in the making or collection of which an act is done that constitutes a misdemeanor under this section, except as a result of accidental, bona fide, or judicially determined justifiable error, shall be barred from recovery of interest or principal. A court may provide for recovery of the principal if the court finds that the violation occurred as a result of good faith reliance on documented advice of government regulators or the attorney general.

Sec. 21. (1) In addition to the provisions of this act, the commissioner may make rules, specific rulings, demands, and findings for the enforcement of this act, but which shall not be inconsistent with this act. Rules shall be filed by the commissioner with the financial institutions bureau in an indexed, permanent book, with the effective date of the rules suitably indicated, and the book shall be a public record. A copy of a rule promulgated pursuant to this act shall be mailed by the commissioner to all licensees under this act at their respective licensed places of business at least 10 days before the effective date of that rule.

(2) Fees received by the commissioner under this act shall be deposited in the state treasury to the credit of the financial institutions bureau, and the money in this account shall be used for the operation of the bureau.

Section 2. Sections 12b, 23, and 26 of Act No. 21 of the Public Acts of 1939, being sections 493.12b, 493.23, and 493.26 of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall take effect October 1, 1991.

This act is ordered to take immediate effect.

.....
Secretary of the Senate.

.....
Clerk of the House of Representatives.

Approved.....

.....
Governor.