

HOUSE BILL No. 5575

March 3, 1992, Introduced by Reps. DeBeaussiaert, DeMars, Gubow and Pitoniak and referred to the Committee on Consumers.

A bill to regulate loan brokers; to prohibit loan brokers from performing certain acts; to provide for the powers and duties of certain state agencies and officials; and to provide for remedies and prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Advance fee" means a consideration that is assessed or
3 collected prior to the closing of a loan by a loan broker.

4 (b) "Borrower" means a person obtaining or desiring to
5 obtain a loan of money, a credit card, or a line of credit.

6 (c) "Department" means the department of commerce.

7 (d) "Loan broker" means a person, except for a national or
8 state chartered bank, savings and loan association, savings bank,
9 or credit union, a consumer finance company, retail installment
10 sales company, securities broker-dealer, real estate broker or

1 salesperson, attorney, mortgage broker or lender, insurance
2 company, or any other person licensed and regulated by an agency
3 of the United States or this state and is acting within the scope
4 of the license.

5 (e) "Person" means an individual, association, partnership,
6 corporation, or any other legal entity.

7 (f) "Principal" means an officer, director, partner, joint
8 venturer, branch manager, or other person with similar managerial
9 or supervisory responsibilities for a loan broker.

10 Sec. 2. A loan broker shall not do any of the following:

11 (a) Assess or collect an advance fee from a borrower to pro-
12 vide services as a loan broker.

13 (b) Make or use a false or misleading representation or omit
14 a material fact in the offer or sale of the services of a loan
15 broker or engage, directly or indirectly, in an act that would be
16 fraud or deception upon a person in connection with the offer or
17 sale of the services of a loan broker.

18 (c) Make or use a false or deceptive representation in its
19 business dealings or with the department or conceal a material
20 fact from the department.

21 Sec. 3. A principal of a loan broker may be sanctioned for
22 the actions of the loan broker, including its agents or employ-
23 ees, in the course of business of the loan broker.

24 Sec. 4. (1) The department may order a loan broker to cease
25 and desist when the department determines that the loan broker
26 has violated, is violating, or will violate a provision of this

1 act, a rule promulgated by the department, or a written agreement
2 entered into with the department.

3 (2) The department may impose and collect an administrative
4 fine in an amount not to exceed \$5,000.00 for each violation
5 against a person found by the department or court of law to have
6 violated this act, a rule promulgated by the department, or a
7 written agreement entered into with the department.

8 Sec. 5. (1) The department may make investigations and
9 examinations to determine whether a person has violated or is
10 about to violate this act or a rule promulgated under this act.

11 (2) The department may administer oaths and examine
12 witnesses.

13 (3) Subpoenas for witnesses whose evidence is considered
14 material to an investigation or examination may be issued by the
15 department directing the witnesses to appear before the depart-
16 ment and to bring such books, records, and documents as may be
17 specified in the subpoena.

18 (4) In the event of substantial noncompliance with a sub-
19 poena or subpoena duces tecum issued by the department, the
20 department may petition the circuit court of the county in which
21 the person subpoenaed resides or has its principal place of busi-
22 ness for an order requiring the person to appear and fully comply
23 with the subpoena. Costs incurred by the department to obtain an
24 order granting, in whole or in part, a petition for enforcement
25 of a subpoena or subpoena duces tecum shall be taxed against the
26 subpoenaed person and failure to comply with the order shall be a
27 contempt of court.

1 Sec. 6. (1) If the department determines that a person has
2 engaged, is engaging, or is about to engage in an act or practice
3 constituting a violation of this act or a rule promulgated under
4 this act, the department may bring action on behalf of the people
5 of this state against the person or persons participating in or
6 about to participate in a practice that violates this act to
7 enjoin the person or persons from continuing to violate this
8 act.

9 (2) Upon application of the department, the court may
10 appoint a receiver for the property, assets, and business of the
11 defendant, including, but not limited to, all books, records,
12 documents, and papers. The receiver, when appointed and quali-
13 fied, shall have all powers and duties as to custody, collection,
14 administration, winding up, and liquidation of the property and
15 business as may be conferred upon him or her by the court. In an
16 action, the court may issue orders and decrees staying all pend-
17 ing suits and enjoining any further suits affecting the
18 receiver's custody or possession of the property, assets, and
19 business or require that all suits be assigned to the circuit
20 court judge appointing the receiver.

21 (3) In addition to any other remedies provided by this act,
22 the department may apply to the court for an order of restitution
23 whereby the defendants in the action are ordered to make restitu-
24 tion of those sums shown by the department to have been obtained
25 by them in violation of this act. The restitution, at the option
26 of the court, is payable to the receiver appointed pursuant to

1 this section or directly to the persons whose assets were
2 obtained in violation of this act.

3 Sec. 7. (1) The department shall be responsible for the
4 administration and enforcement of this act.

5 (2) The department may promulgate rules as it may consider
6 necessary in the administration of this act pursuant to the
7 administrative procedures act of 1969, Act No. 306 of the Public
8 Acts of 1969, being sections 24.201 to 24.328 of the Michigan
9 Compiled Laws.

10 Sec. 8. A borrower injured by a violation of this act may
11 bring an action for recovery of damages. Judgment shall be
12 entered for actual damages, but in no case less than the amount
13 paid by the borrower to the loan broker, plus reasonable
14 attorney's fees and costs.

15 Sec. 9. A person who violates this act is guilty of a
16 felony, punishable by imprisonment for not more than 2 years, or
17 by a fine of not more than \$15,000.00, or both.