

HOUSE BILL No. 6105

September 22, 1992, Introduced by Rep. Murphy and referred to the Committee on Corporations and Finance.

A bill to amend the title and sections 2, 6, 8, and 9 of Act No. 135 of the Public Acts of 1977, entitled

"An act to prohibit certain mortgage lending practices by a credit granting institution; to require the institution to make reports regarding its mortgage lending practices; to prescribe the powers and duties of the commissioner of the financial institutions bureau in relation to those practices; to permit the establishment of local mortgage review boards; and to provide remedies and penalties,"

being sections 445.1602, 445.1606, 445.1608, and 445.1609 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2, 6, 8, and 9 of Act
2 No. 135 of the Public Acts of 1977, being sections 445.1602,
3 445.1606, 445.1608, and 445.1609 of the Michigan Compiled Laws,
4 are amended to read as follows:

TITLE

1

2 An act to prohibit certain mortgage lending practices by a
3 credit granting institution; ~~to require the institution to make~~
4 ~~reports regarding its mortgage lending practices;~~ to prescribe
5 the powers and duties of the commissioner of the financial insti-
6 tutions bureau in relation to those practices; to permit the
7 establishment of local mortgage review boards; and to provide
8 remedies and penalties.

9 Sec. 2. (1) ~~A~~ EXCEPT ON THE BASIS OF WRITTEN POLICIES OR
10 CRITERIA UNIFORMLY APPLIED TO ALL NEIGHBORHOODS WITHIN A PARTICU-
11 LAR STANDARD METROPOLITAN STATISTICAL AREA OR WITHIN THE COUNTY
12 IN AREAS OUTSIDE A STANDARD METROPOLITAN STATISTICAL AREA, A
13 credit granting institution shall not deny a loan application ~~—~~
14 or vary the interest rate, the term to maturity, the percentage
15 required for a down payment, the application and appraisal proce-
16 dures, or other terms or conditions of a loan contract FOR EITHER
17 OF THE FOLLOWING:

18 (a) Due to racial or ethnic characteristics or trends in the
19 neighborhood in which the real estate is located.

20 ~~(b) Except on the basis of written policies or criteria~~
21 ~~uniformly applied to all neighborhoods within a particular stan-~~
22 ~~dard metropolitan statistical area or within the county in areas~~
23 ~~outside a standard metropolitan statistical area. A policy or~~
24 ~~criteria used by a credit granting institution will be considered~~
25 ~~to be uniformly applied, even if a credit granting institution~~
26 ~~grants exceptions to the policy or criteria in favor of a loan~~

1 ~~applicant in not more than 5% of the loan applications submitted~~
2 ~~to the credit granting institution.~~

3 (B) ~~(c)~~ Due to the age of the structure on the real estate
4 proposed as security ~~—~~ or the age of other structures in the
5 neighborhood in which the real estate is located. This subdivi-
6 sion ~~shall~~ DOES not preclude a credit granting institution from
7 considering the physical condition and probable remaining useful
8 life of the structure and all structures within a radius of 750
9 feet.

10 (2) A POLICY OR CRITERIA USED BY A CREDIT GRANTING INSTITU-
11 TION IS CONSIDERED TO BE UNIFORMLY APPLIED, EVEN IF A CREDIT
12 GRANTING INSTITUTION GRANTS EXCEPTIONS TO THE POLICY OR CRITERIA
13 IN FAVOR OF A LOAN APPLICANT IN NOT MORE THAN 5% OF THE LOAN
14 APPLICATIONS SUBMITTED TO THE CREDIT GRANTING INSTITUTION.

15 (3) ~~(2)~~ Each loan application shall be individually con-
16 sidered on the basis of a factually supportable analysis of the
17 lending risks associated with the proposed loan.

18 (4) ~~(3)~~ A credit granting institution shall not impose a
19 minimum mortgage amount greater than ~~\$5,000.00.~~ A \$10,000.00,
20 AND A credit granting institution shall not impose a minimum loan
21 amount of greater than ~~\$500.00~~ \$1,000.00 for a home improvement
22 loan.

23 (5) ~~(4)~~ A credit granting institution shall not deny an
24 individual an opportunity to submit a loan application. This act
25 shall not be construed to require a credit union to allow loan
26 inquiry or application by a person who is not a member or
27 eligible to be a member of the credit union.

1 (6) ~~-(5)-~~ A person who makes a loan application for a
2 mortgage loan or home improvement loan ~~which~~ THAT is denied or
3 the terms of which are varied and not accepted by the applicant
4 shall receive from the credit granting institution a written
5 statement of the reasons for the rejection or variation of
6 terms. A credit granting institution that complies with the
7 requirements of the equal credit opportunity act, TITLE VII OF
8 PUBLIC LAW 90-321, 15 U.S.C. 1691 to 1691f, and the regulations
9 promulgated under that act, ~~shall be~~ IS considered to have com-
10 plied with the requirements of this subsection.

11 (7) ~~-(6)-~~ A credit granting institution, unless otherwise
12 prohibited by law, may charge an application fee uniform as to
13 type of loan. ~~applied for.~~ If a credit granting institution
14 includes appraisal in its written statement of reasons for rejec-
15 tion or variance or collects an application appraisal fee, then
16 upon the request of a person making a loan application ~~which~~
17 THAT is denied or the terms of which are varied and not accepted
18 by the applicant, a credit granting institution shall provide the
19 person, without additional charge, with a copy of the appraisal
20 made in connection with the loan application. If an application
21 appraisal fee is not collected, the copy may be made usable only
22 for purposes related to this act. Copies of other completed
23 forms, reports, and correspondence, except a credit report or
24 correspondence pertaining to a credit report, used by the credit
25 granting institution in reaching its decision shall be provided,
26 on request ~~—~~ and without charge, to a person making a loan

1 application ~~which~~ THAT is denied or the terms of which are
2 varied and not accepted by the applicant.

3 (8) ~~(7) A~~ EXCEPT FOR AN ERROR OR OMISSION THAT IS A VIOLA-
4 TION OF THIS ACT, A credit granting institution ~~shall~~ IS not
5 ~~be~~ liable to an applicant or any other person for an error or
6 omission in an appraisal or other supporting documents made
7 available to an applicant. ~~, except if the error or omission is~~
8 ~~a violation of this act.~~

9 (9) ~~(8)~~ If a person makes a loan inquiry relating to the
10 prospects of obtaining a loan, the credit granting institution
11 shall respond to the inquiry and shall send or cause to be deliv-
12 ered to the person making the inquiry a copy of the pamphlet or
13 other documents prepared pursuant to subsection ~~(9)~~ (10).

14 (10) ~~(9)~~ Each credit granting institution shall make
15 available for public distribution at the institution's principal
16 office and each branch office or service center a pamphlet or
17 document explaining in general terms the credit granting
18 institution's criteria for the approval or denial of a loan
19 application. The pamphlet or other document shall prominently
20 state that ~~any~~ A person has the right to make a loan inquiry
21 and to file a written application for a mortgage loan or home
22 improvement loan and to receive a written response ~~thereto~~ TO
23 THE APPLICATION. A credit granting institution may use a sepa-
24 rate pamphlet or document for mortgage loans and home improvement
25 loans, and the pamphlet or document may contain additional mate-
26 rial as well as the material required by this subsection. A copy

1 of the pamphlet or other document ~~currently in use~~ shall be
2 filed with the commissioner.

3 Sec. 6. ~~(1) Not more than 90 days after the end of a~~
4 ~~credit granting institution's fiscal year, a credit granting~~
5 ~~institution which is required to file a disclosure report pursu-~~
6 ~~ant to the federal home mortgage disclosure act of 1975, 12~~
7 ~~U.S.C. 2801 to 2809, and the regulations promulgated under that~~
8 ~~act, shall file a copy of that report with the commissioner.~~

9 ~~(2) Not more than 90 days after the end of a credit granting~~
10 ~~institution's fiscal year, a credit granting institution which is~~
11 ~~not required to file a disclosure report pursuant to the federal~~
12 ~~home mortgage disclosure act shall prepare and file with the com-~~
13 ~~missioner a report that conforms in form and substance with the~~
14 ~~requirements of the federal home mortgage disclosure act.~~

15 ~~(3) Not more than 90 days after the end of a credit granting~~
16 ~~institution's fiscal year, each credit granting institution shall~~
17 ~~disclose by neighborhood for the previous fiscal year the~~
18 ~~following:~~

19 ~~(a) The average down payment as a percentage of the mortgage~~
20 ~~loans, the average annual percentage rate of interest for the~~
21 ~~mortgage loans, and the average term of the mortgage loans made~~
22 ~~during the reporting period which are not guaranteed or insured~~
23 ~~by the United States government or a department or agency of the~~
24 ~~United States government and which:~~

25 ~~(i) Are on real property where at the time of execution of~~
26 ~~the particular mortgage the borrower intends to reside in the~~

1 ~~property securing the mortgage loan, except multifamily~~
2 ~~dwellings.~~

3 ~~(ii) Are on multifamily dwellings, except if there would be~~
4 ~~only 1 such mortgage reported.~~

5 ~~(iii) Are on real property where at the time of execution of~~
6 ~~the particular mortgage, the borrower did not have an intention~~
7 ~~to reside in the property securing the mortgage, except multifam-~~
8 ~~ily dwellings.~~

9 ~~(b) The number and total dollar amount of home improvement~~
10 ~~loans.~~

11 ~~(4) Not more than 90 days after the end of a credit granting~~
12 ~~institution's fiscal year, each credit granting institution shall~~
13 ~~file with the commissioner, either as part of the report required~~
14 ~~under subsection (1) or (2) or as an additional report in a form~~
15 ~~comparable to the disclosures under subsections (1) and (2), a~~
16 ~~report which discloses by neighborhood the number of loan appli-~~
17 ~~cations denied and the reasons given for such denial and a report~~
18 ~~which discloses by neighborhood the number and total dollar~~
19 ~~amount of mortgage loans foreclosed.~~

20 ~~(5) The reports filed with the commissioner pursuant to this~~
21 ~~section 6 shall be available to the public for inspection at the~~
22 ~~main office of the credit granting institution and at least 1~~
23 ~~other branch office or service center of the institution, if any,~~
24 ~~located within each standard metropolitan statistical area in~~
25 ~~which the credit granting institution does business.~~

26 ~~(6) A credit granting institution which has total assets at~~
27 ~~the end of the credit granting institution's last full fiscal~~

~~1 year of \$10,000,000.00 or less and which is either regulated by
2 the financial institutions bureau or is a federally chartered
3 credit granting institution is exempt from this section.~~

~~4 (7) An error in compiling or disclosing required mortgage
5 loan data shall not be considered a violation of this act if the
6 error was unintentional and resulted from a bona fide mistake
7 notwithstanding the maintenance of procedures reasonably adopted
8 to avoid error.~~ ON OR BEFORE MARCH 31 OF EACH YEAR, A CREDIT
9 GRANTING INSTITUTION SHALL FILE WITH THE COMMISSIONER AN AFFIDA-
10 VIT STATING WHETHER THE INSTITUTION IS SUBJECT TO THE FEDERAL
11 HOME MORTGAGE DISCLOSURE ACT OF 1975, TITLE III OF PUBLIC LAW
12 94-200, 12 U.S.C. 2801 TO 2810, AND IF SUBJECT TO THE ACT, THAT
13 THE INSTITUTION HAS COMPLIED WITH THE REQUIREMENTS OF THE ACT AND
14 THE REGULATIONS PROMULGATED UNDER THE ACT.

15 Sec. 8. ~~(+)~~ If ~~—~~ in the opinion of the commissioner ~~—~~
16 a credit granting institution is violating or has violated this
17 act, or upon receipt of a written complaint of an alleged viola-
18 tion of this act by a credit granting institution, the commis-
19 sioner shall investigate the alleged violation by the
20 institution. ~~An~~ THE investigation shall commence within 15
21 days after the receipt of a complaint, ~~—The~~ AND THE commis-
22 sioner shall report on the progress of the investigation to the
23 affected parties within 30 days. ~~—shall complete the~~ THE
24 investigation SHALL BE COMPLETED within 60 days after receipt of
25 the complaint, and THE COMMISSIONER shall report the findings to
26 the affected parties. The commissioner may conduct a hearing on
27 a complaint pursuant to THE ADMINISTRATIVE PROCEDURES ACT OF

1 1969, Act No. 306 of the Public Acts of 1969, ~~as amended,~~ being
2 sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled
3 Laws.

4 ~~(2) The commissioner shall report annually to the governor~~
5 ~~and the legislature on the enforcement of this act. The report~~
6 ~~shall include findings on mortgage lending activities based on~~
7 ~~the review of data disclosed pursuant to section 6 and the~~
8 ~~enforcement activities conducted pursuant to sections 7 and~~
9 ~~8(1).~~

10 Sec. 9. (1) The commissioner shall encourage credit grant-
11 ing institutions to cooperate with local citizen's groups and
12 governing bodies of local units of government in the formation
13 and operation of voluntary mortgage review boards. The purpose
14 of voluntary local mortgage review boards ~~shall be reviewing~~ IS
15 TO REVIEW complaints of rejected loan applicants, ~~attempting~~
16 ATTEMPT to place loans for rejected applicants, ~~and~~ OR any
17 other purpose to which the persons forming ~~a~~ THE mortgage
18 review board may agree.

19 (2) The commissioner ~~shall be authorized to~~ MAY assist
20 loan applicants and credit granting institutions in the placement
21 of loans.

22 ~~(3) After July 1, 1979, in a standard metropolitan statis-~~
23 ~~tical area in which the commissioner finds that voluntary mort-~~
24 ~~gage review boards are not functioning satisfactorily and in~~
25 ~~which the commissioner receives a substantial number of valid~~
26 ~~complaints or the commissioner otherwise finds that this act is~~
27 ~~not being substantially complied with by more than 1 credit~~

~~1 granting institution, the commissioner may establish a mandatory
2 mortgage review board or boards. Not more than 1 mandatory mort-
3 gage review board shall be in each county in a standard metropol-
4 itan statistical area. A mandatory mortgage review board may
5 only review the complaints of rejected loan applicants and
6 attempt to place loans for rejected loan applicants. Testimony
7 given before and the findings of mandatory mortgage review boards
8 shall not be admissible in an administrative hearing or court of
9 law.~~

~~10 (4) The commissioner's authority to establish mandatory
11 mortgage review boards and the authority of those boards estab-
12 lished by the commissioner will cease on January 1, 1983, unless
13 extended by the legislature.~~

~~14 (5) A mandatory mortgage review board established pursuant
15 to subsection (3) shall consist of the commissioner or the
16 commissioner's representative and 8 members appointed by the gov-
17 ernor to serve for a term not to exceed 3 years. Not more than 4
18 of the members shall be of the same political party. The 8 mem-
19 bers shall be appointed as follows:~~

~~20 (a) Three members of the public who are from the area cov-
21 ered by the board and who shall not be connected with credit
22 granting institutions.~~

~~23 (b) Three representatives of credit granting institutions
24 who are recommended to the governor by credit granting institu-
25 tions which are active in making mortgage loans or home improve-
26 ment loans, or both, in the area covered by the board and who are
27 from the area covered by the board.~~

1 ~~(c) An elected official of a local government within the~~
2 ~~area covered by the board.~~

3 ~~(d) An appraiser who is a member of a nationally recognized~~
4 ~~organization of appraisers and who is from the area covered by~~
5 ~~the board.~~

6 (3) ~~-(6)-~~ If a mortgage review board is unable to success-
7 fully place the loan for the rejected applicant, the board shall
8 notify the applicant in writing of the applicant's right to file
9 a complaint with the commissioner or other governmental agency,
10 or both, ~~which~~ THAT has regulatory authority over the institu-
11 tion that denied the loan.

12 (4) ~~-(7)-~~ Voluntary mortgage review boards shall not be
13 subject to THE FREEDOM OF INFORMATION ACT, Act No. 442 of the
14 Public Acts of 1976, being sections 15.231 to 15.246 of the
15 Michigan Compiled Laws, and THE OPEN MEETINGS ACT, Act No. 267 of
16 the Public Acts of 1976, being sections 15.261 to 15.275 of the
17 Michigan Compiled Laws.

18 ~~-(8) Mandatory mortgage review boards shall be subject to~~
19 ~~Act No. 442 of the Public Acts of 1976, and Act No. 267 of the~~
20 ~~Public Acts of 1976.~~

21 (5) ~~-(9) However, the~~ THE material furnished to the board
22 by the loan applicant or by the financial institution at the
23 applicant's request and other material relating to an applicant
24 shall be kept confidential. Before a financial institution may
25 release records and documents pertaining to the loan application
26 to the mortgage review board, the applicant shall sign a release
27 form. A financial institution may not release a credit report.

1 (6) ~~-(10)-~~ A mortgage review board shall maintain minutes
2 which ~~shall~~ reflect the number of cases appealed to the board,
3 the disposition of each case, the persons present at each pro-
4 ceeding, and if closed to the public, the party requesting the
5 closing.

6 (7) ~~-(11)-~~ Meetings of mandatory mortgage review boards
7 shall be open to the public unless the rejected applicant or the
8 disapproving financial institution requests a closed session to
9 discuss material concerning the rejected application. In cases
10 of closed meetings, only members of the mortgage review board,
11 the disapproving financial institution or the institution's rep-
12 resentatives, or both, and the rejected applicant or the
13 applicant's representatives, or both, shall attend.

14 Section 2. This amendatory act shall not take effect unless
15 Senate Bill No. _____ or House Bill No. 6106 (request
16 no. 05996'92) of the 86th Legislature is enacted into law.