

Act No. 164  
Public Acts of 1995  
Approved by the Governor  
October 9, 1995  
Filed with the Secretary of State  
October 9, 1995

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Reps. Middaugh, Gnodtke, Kaza, Rhead, Perricone and Gernaat

# **ENROLLED HOUSE BILL No. 4618**

AN ACT to amend the title and sections 1, 21, 22, and 27 of Act No. 125 of the Public Acts of 1981, entitled as amended "An act to define and regulate secondary mortgage loans and other unsecured loans; to prescribe powers and duties of the financial institutions bureau and certain state agencies; to provide for the establishment of a financial institutions bureau operations fund; to provide for the promulgation of rules; and to provide for civil fines and penalties," section 1 as amended by Act No. 66 of the Public Acts of 1989, section 21 as amended by Act No. 155 of the Public Acts of 1985, section 22 as amended by Act No. 408 of the Public Acts of 1994, and section 27 as amended by Act No. 77 of the Public Acts of 1992, being sections 493.51, 493.71, 493.72, and 493.77 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. The title and sections 1, 21, 22, and 27 of Act No. 125 of the Public Acts of 1981, section 1 as amended by Act No. 66 of the Public Acts of 1989, section 21 as amended by Act No. 155 of the Public Acts of 1985, section 22 as amended by Act No. 408 of the Public Acts of 1994, and section 27 as amended by Act No. 77 of the Public Acts of 1992, being sections 493.51, 493.71, 493.72, and 493.77 of the Michigan Compiled Laws, are amended to read as follows:

## **TITLE**

An act to define and regulate secondary mortgage loans; to prescribe powers and duties of the financial institutions bureau and certain state agencies; to provide for the establishment of a financial institutions bureau operations fund; to provide for the promulgation of rules; and to provide for civil fines and penalties.

Sec. 1. As used in this act:

(a) "Commissioner" means the commissioner of the financial institutions bureau of the department of commerce and authorized representatives of the commissioner.

(b) "Licensee" means a person licensed under this act.

(c) "Person" means an individual, corporation, partnership, association, or other legal entity, but does not include a state or national bank, a state or federal savings and loan association, insurance company, or other financial institution subject to another law of this state or of the United States regulating the power of the financial institution to engage in secondary mortgage loan transactions.

(d) "Secondary mortgage loan" means a loan of \$3,000.00 or more that is not to be repaid within 90 days, that is made to a person for personal, family, or household purposes, and that is secured by a mortgage upon an interest in real property used as a dwelling if the property is subject to the lien of 1 or more prior mortgages, or the purchase of an interest in an existing mortgage is made to secure the loan. Notwithstanding the place of execution, nominal or real, of

a secondary mortgage loan, if the real property that secures the loan is located in this state, the secondary mortgage loan is subject to this act and all other applicable laws of this state.

Sec. 21. A licensee may charge, contract for, receive, or collect on a secondary mortgage loan an interest rate not exceeding the interest rate permitted by the credit reform act. Interest on a secondary mortgage loan under this act shall not be added or deducted in advance but shall be computed on the basis of the actual unpaid balance of the principal of the loan on a daily or monthly basis for the time actually outstanding until the loan is paid in full.

Sec. 22. (1) Other charges and fees shall not be made, directly or indirectly, in connection with the making of a secondary mortgage loan, except for the following, which may be included in the principal of the loan:

(a) Reasonable fees or premiums that are the actual expenses incurred by the licensee for title insurance, abstract of title, or title examination.

(b) Reasonable fees that are the actual expenses incurred by the licensee for an appraisal.

(c) Fees and charges prescribed by law that are paid to a public official for determining the existence of, or for perfecting, releasing, or satisfying any security related to the loan.

(d) Charges for credit life insurance or credit accident and health insurance as defined in the credit insurance act, Act No. 173 of the Public Acts of 1958, being sections 550.601 to 550.624 of the Michigan Compiled Laws, or any other insurance pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, that is offered by the licensee and that may be purchased at the option of the borrower.

(e) A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.

(f) A late charge assessed by the licensee and authorized under the credit reform act.

(g) A reasonable annual fee for the privilege of receiving open-end credit from the licensee. As used in this subdivision, "open-end credit" means credit that is extended under a plan in which both of the following apply:

(i) The licensee reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

(2) Upon request, a licensee shall provide to a borrower or potential borrower a good faith estimate of the total of all charges permitted under subsection (1) and state the interest rate at which secondary mortgage loans are being made at the time of the request. A licensee shall indicate that the charges and rates quoted are estimates. A good faith estimate and interest rate quote provided pursuant to this subsection shall not be construed as a commitment from the licensee to make a loan or to make a loan at a particular price.

(3) At or before the closing of the loan, the lender shall provide an itemized list of the actual charges permitted by subsection (1) that the borrower has paid or is obligated to pay.

(4) The borrower is not required to pay directly or indirectly a commission, finder's fee, or points for the obtaining, procuring, or placing of a secondary mortgage loan. Commissions, finder's fees, or points, if any, shall be paid by the licensee and only to licensed real estate brokers, attorneys at law of this state, or other licensees. An agreement for the payment of a commission, finder's fee, or point, to be enforceable in the courts of this state, shall be in writing, signed by the licensee.

(5) Charges shall not be collected for insurance financed as part of a loan made under this act unless a borrower has voluntarily executed a written authorization on a form approved by the commissioner. The authorization form shall be separate from other loan documents and clearly set forth both of the following:

(a) That the insurance is not required in order to obtain the loan.

(b) The cost of the insurance.

(6) Any insurance sold by a licensee shall be in accordance with the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws or the credit insurance act, Act No. 173 of the Public Acts of 1958, being sections 550.601 to 550.624 of the Michigan Compiled Laws.

Sec. 27. (1) In addition to the penalties provided by this act, a violation of this act with respect to a particular secondary mortgage transaction is also subject to the penalty and remedy provisions of the credit reform act.

(2) A person, association, nonprofit corporation, common law trust, joint stock company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative thereof who or which willfully or intentionally engages in this state in the business of making secondary mortgage loans as defined in this act without a license, as required under this act, is guilty of a misdemeanor and upon conviction shall be fined not more than \$5,000.00, or imprisoned for not more than 3 years, or both, at the discretion of the court.

(3) A person who violates this act or directly or indirectly counsels, aids, or abets a violation is liable, in addition to other penalties and forfeitures imposed by this act, for a civil fine of not more than \$1,000.00 for each offense. The civil fine shall be sued for and recovered by and in the name of the commissioner and shall be collected and enforced by summary proceedings by the attorney general.

(4) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin in accordance with the principal of equity a person who is engaging or is about to engage in a method, act, or practice that violates this act.

(c) Recover actual damages resulting from a violation of this act or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action.

Section 2. This amendatory act shall not take effect unless House Bill No. 4614 of the 88th Legislature is enacted into law.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.