

Act No. 165
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. Alley, Profit, Kaza, Kukuk, Rhead, Perricone, Gernaat and Gnodtke

ENROLLED HOUSE BILL No. 4619

AN ACT to amend sections 1, 13, 18, and 19 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 13 as amended by Act No. 142 of the Public Acts of 1994 and sections 1 and 19 as amended by Act No. 14 of the Public Acts of 1991, being sections 493.1, 493.13, 493.18, and 493.19 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 1, 13, 18, and 19 of Act No. 21 of the Public Acts of 1939, section 13 as amended by Act No. 142 of the Public Acts of 1994 and sections 1 and 19 as amended by Act No. 14 of the Public Acts of 1991, being sections 493.1, 493.13, 493.18, and 493.19 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 under this act 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" means an individual, partnership, association, corporation, or any other legal entity.

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

(c) "License" means a single license issued 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 liquid assets, 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 \$15,000.00.

(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 that 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. 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 that does not exceed the rate permitted by the credit reform act. A loan by a licensee may be 1 of the following:

(a) A closed-end loan.

(b) Open-end credit consisting of direct advances from the licensee or checks issued by the licensee. This subdivision does not apply to open-end credit available through the use of a credit card or charge card.

(2) A licensee shall not induce or permit a person to become directly obligated under more than 1 loan contract 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, specifically expressed in every obligation signed by the borrower, and 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 closed-end loan made, and may be included in the principal of the loan. A licensee may require the borrower to pay the late charges permitted by the credit reform act. 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 other amount shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid by the licensee to a governmental entity for the filing, recording, or releasing of either of the following:

(a) A financing statement or an instrument securing the loan, or both.

(b) A record noting or releasing a lien or transferring a certificate of title under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(5) The fees permitted under this section may be collected at any time on or after the date the loan is made.

(6) A licensee may charge a handling fee of \$5.00 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) A licensee may charge a reasonable annual fee for the privilege of receiving open-end credit from the licensee.

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

(9) As used in this section, "open-end credit" means credit that is not secured by an interest in real property and is extended under a plan in which both of the following apply:

(a) The licensee reasonably contemplates repeated transactions.

(b) 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.

Sec. 18. (1) A person, except as authorized by this act, shall not directly or indirectly charge, contract for, or receive an interest, discount, or consideration greater than the lender would be permitted by law to charge if the lender were not licensed under this act upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value included within the regulatory loan ceiling.

(2) The prohibition specified in subsection (1) applies to a person who or which, by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

(3) This act does not apply to loans legally made in another state or country by a licensee under a regulatory loan law similar in principle to this act, except that loans made by mail to Michigan residents are subject to this act.

Sec. 19. (1) A person, including a member, officer, director, agent, or employee of a licensee, who violates or participates in the violation of section 1, 12, 13, 14, or 18 is 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 makes or collects upon a loan contract in a manner prohibited by this act is guilty of a misdemeanor under this section and is subject to the credit reform act.

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

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.