



HOUSE BILL No. 4618

March 16, 1995, Introduced by Reps. Middaugh, Gnodtke, Kaza, Rhead, Perricone and Gernaat and referred to the Committee on Commerce.

A bill to amend 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:

1 Section 1. Sections 1, 21, 22, and 27 of Act No. 125 of the
2 Public Acts of 1981, section 1 as amended by Act No. 66 of the

1 Public Acts of 1989, section 21 as amended by Act No. 155 of the
2 Public Acts of 1985, section 22 as amended by Act No. 408 of the
3 Public Acts of 1994, and section 27 as amended by Act No. 77 of
4 the Public Acts of 1992, being sections 493.51, 493.71, 493.72,
5 and 493.77 of the Michigan Compiled Laws, are amended to read as
6 follows:

7 Sec. 1. As used in this act:

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

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

12 (c) "Person" means an individual, corporation, partnership,
13 ASSOCIATION, or ~~a group of individuals however organized~~ OTHER
14 LEGAL ENTITY, but does not include a state or national bank, a
15 state or federal savings and loan association, insurance company,
16 or other financial institution subject to another law of this
17 state or of the United States regulating the power of the finan-
18 cial institution to engage in secondary mortgage loan
19 transactions.

20 (d) "Secondary mortgage loan" means a loan of \$3,000.00 or
21 more THAT IS NOT TO BE REPAID WITHIN 90 DAYS, THAT IS made to ~~an~~
22 ~~individual, corporation, or partnership~~ A PERSON for personal,
23 family, or household purposes, ~~not to be repaid in 90 days or~~
24 ~~less, which~~ AND THAT is secured by a mortgage upon an interest
25 in real property used as a dwelling if the property is subject to
26 the lien of 1 or more prior mortgages, or the purchase of an
27 interest in an existing mortgage is made to secure the loan.

1 Notwithstanding the place of execution, nominal or real, of a
2 secondary mortgage loan, if the real property ~~which~~ THAT
3 secures the loan is located in this state, the secondary mortgage
4 loan is subject to this act and all other applicable laws of this
5 state. ~~A secondary mortgage loan may include an unsecured loan
6 as defined in subdivision (e).~~

7 ~~(e) "Unsecured loan" means a loan of \$3,000.00 or more made
8 by a licensee to a person for personal, family, or household pur-
9 poses not to be repaid in 90 days or less and not secured by any
10 collateral. An unsecured loan is subject to this act except for
11 provisions specific to the taking, recording, or releasing of a
12 junior lien on real property.~~

13 Sec. 21. A licensee may charge, contract for, receive, or
14 collect on a secondary mortgage loan an interest rate not exceed-
15 ing ~~+8% per year, computed by the actuarial method.~~ The
16 ~~licensee shall make disclosures as required by the consumer
17 credit protection act, Public Law 90 321, 82 Stat. 146, and the
18 regulations promulgated under that~~ THE INTEREST RATE PERMITTED
19 BY THE CREDIT REFORM act. Interest on a secondary mortgage loan
20 under this act shall not be added or deducted in advance but
21 shall be computed on the basis of the actual unpaid balance of
22 the principal of the loan on a daily or monthly basis for the
23 time actually outstanding until the loan is paid in full.

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

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

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

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

9 (d) Charges for credit life insurance or credit accident and
10 health insurance as defined in the credit insurance act, Act
11 No. 173 of the Public Acts of 1958, being sections 550.601 to
12 550.624 of the Michigan Compiled Laws, or any other insurance
13 pursuant to the insurance code of 1956, Act No. 218 of the Public
14 Acts of 1956, being sections 500.100 to 500.8302 of the Michigan
15 Compiled Laws, that is offered by the licensee and ~~purchase is~~
16 THAT MAY BE PURCHASED at the option of the borrower.

17 (e) A nonrefundable processing fee that is not more than
18 ~~2%~~ 5% of the gross amount of the loan.

19 (f) A ~~fee for a late payment if the fee does not exceed the~~
20 ~~greater of \$5.00 or 5% of the minimum payment due that is~~
21 ~~received by the licensee 10 or more days after the due date~~ LATE
22 CHARGE ASSESSED BY THE LICENSEE AND AUTHORIZED UNDER THE CREDIT
23 REFORM ACT.

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

1 (i) The licensee reasonably contemplates repeated
2 transactions.

3 (ii) The amount of credit that may be extended to the bor-
4 rower during the term of the plan is generally made available to
5 the extent that any part of the outstanding balance is repaid.

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

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

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

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

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

9 (b) The cost of the insurance.

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

16 Sec. 27. (1) ~~A~~ IN ADDITION TO THE PENALTIES PROVIDED BY
17 THIS ACT, A violation of this act with respect to a particular
18 secondary mortgage transaction ~~shall result in the forfeiture of~~
19 ~~all interest otherwise owing under the terms of the secondary~~
20 ~~mortgage loan~~ IS ALSO SUBJECT TO THE PENALTY AND REMEDY PROVI-
21 SIONS OF THE CREDIT REFORM ACT.

22 (2) A person, association, nonprofit corporation, common law
23 trust, joint stock company, or any other group of individuals,
24 however organized, or any owner, partner, member, officer, direc-
25 tor, trustee, employee, agent, broker, or representative thereof
26 who or which willfully or intentionally engages in this state in
27 the business of making secondary mortgage loans as defined in

1 this act without a license, as required under this act, is guilty
2 of a misdemeanor and upon conviction shall be fined not more than
3 \$5,000.00, or imprisoned for not more than 3 years, or both, at
4 the discretion of the court.

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

12 (4) Whether or not he or she seeks damages or has an ade-
13 quate remedy at law, a person, a county prosecutor, or the attor-
14 ney general may bring an action to:

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

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

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

23 Section 2. This amendatory act shall not take effect unless
24 Senate Bill No. _____ or House Bill No. 4614 (request
25 no. 02208'95 **) of the 88th Legislature is enacted into law.