

# HOUSE BILL No. 5841

May 12, 1998, Introduced by Reps. Alley, Basham, LaForge, Bogardus, Hale, Bodem, Baade, Callahan and DeVuyst and referred to the Committee on Commerce.

A bill to amend 1939 PA 21, entitled "Regulatory loan act of 1963," by amending sections 1 and 12a (MCL 493.1 and 493.12a), section 1 as amended by 1996 PA 184 and section 12a as amended by 1991 PA 14.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. (1) Except as otherwise provided by this act, a  
2 person shall not engage in the business of making loans of money,  
3 credit, goods, or things in action and charge, contract for, or  
4 receive on the loan a greater rate of interest, discount, or con-  
5 sideration than the lender would be permitted by law to charge if  
6 the lender were not a licensee under this act, ~~and without first~~  
7 ~~obtaining a~~ UNLESS THE PERSON POSSESSES EITHER OF THE  
8 FOLLOWING:

1 (A) A VALID license from the commissioner ISSUED UNDER THIS  
2 ACT for each location at which the business is to be conducted.  
3 ~~under this act, or by obtaining a~~

4 (B) A VALID license ISSUED under the consumer financial  
5 services act, ~~Act No. 161 of the Public Acts of 1988, being sec-~~  
6 ~~tions 487.2051 to 487.2072 of the Michigan Compiled Laws 1988~~  
7 PA 161, MCL 487.2051 TO 487.2072.

8 (2) As used in this act:

9 (a) "Person" means an individual, partnership, association,  
10 corporation, limited liability company, or other legal entity.

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

12 (c) "License" means a single license issued to a single  
13 place of business.

14 (d) "Liquid assets" means cash, unrestricted deposits in  
15 banks, and readily marketable securities at their then market  
16 value.

17 (e) "Assets" means liquid assets, collectible loans made in  
18 accordance with this act, and personal property acquired in the  
19 general conduct of business transacted under this act.

20 (f) "Commissioner" means the commissioner of the financial  
21 institutions bureau in the department of ~~commerce~~ CONSUMER AND  
22 INDUSTRY SERVICES.

23 (g) "Advertising" means publishing or broadcasting, or caus-  
24 ing to be published or broadcast, material that has been prepared  
25 for public distribution by means of newspapers, magazines, MAIL,  
26 or electronic media. Advertising does not include a stockholder  
27 communication, such as an annual report, interim financial

1 report, registration statement, security, prospectus, application  
2 for listing a security on a stock exchange, or proxy materials.  
3 Advertising does not include a communication addressed to a  
4 person who has previously executed a loan agreement relative to  
5 that person's account UNLESS THE COMMUNICATION INCLUDES AN UNSO-  
6 LICITED CHECK DESCRIBED IN SECTION 12A.

7 (H) "CONSUMER" MEANS A NATURAL PERSON.

8 Sec. 12a. (1) False, misleading, deceptive, or irresponsi-  
9 ble advertising is unlawful and is defined as follows:

10 (a) Advertising ~~which~~ THAT lures, entices, induces, or  
11 tends to induce a person to incur a debt by unreasonably minimiz-  
12 ing the consequences of assuming a legal repayment obligation or  
13 by depicting the assumption of a debt obligation as a frivolous  
14 transaction. ADVERTISING DESCRIBED IN THIS SUBDIVISION INCLUDES  
15 THE UNSOLICITED DELIVERY OF A CHECK OR CHECKS TO A CONSUMER IN  
16 VIOLATION OF SUBSECTION (3).

17 (b) Advertising that describes or depicts the benefits or  
18 advantages of having the money from a loan, without describing or  
19 depicting the obligation of repaying the loan with interest.

20 (c) Advertising with claims and representations that are not  
21 accurate or provable.

22 (d) Advertising ~~which~~ THAT misrepresents facts or creates  
23 misleading impressions.

24 (e) Advertising ~~which~~ THAT contains a statement which,  
25 though true, implies an untruth.

1 (f) Advertising ~~which~~ THAT uses the phrase "lowest rates",  
2 "lowest rates in the city", or similar phrases unless the rates  
3 are actually lower than those of other lenders.

4 (g) Advertising ~~which~~ THAT uses the phrase "new reduced  
5 rates", "new low rates", "reduced rates", or similar phrases for  
6 more than 60 days after the changed rates become effective.

7 (h) Advertising ~~which~~ THAT causes a probability of confu-  
8 sion or misunderstanding as to the legal rights, obligations, or  
9 remedies of a lender, or as to the terms or conditions of  
10 credit.

11 (i) Advertising ~~which~~ THAT represents that a borrower will  
12 receive a rebate, discount, or other benefit as an inducement for  
13 entering into a transaction, if the benefit is contingent on an  
14 event to occur subsequent to the consummation of the  
15 transaction.

16 (j) Advertising ~~which~~ THAT suggests or infers that a loan  
17 is not a loan, or that interest is not charged, or that the bor-  
18 rower is not under an obligation to repay.

19 (2) A licensee shall not advertise any size of loan, secur-  
20 ity required for a loan, rate of charge, or other condition of  
21 lending except with the full intent of making loans at those  
22 rates, or lower rates, and under those conditions, to applicants  
23 who meet the standards or qualifications prescribed.

24 (3) A LICENSEE SHALL NOT PROVIDE A CONSUMER WITH EITHER OF  
25 THE FOLLOWING:

1 (A) AN UNSOLICITED BLANK CHECK THAT WOULD ENABLE THE  
2 CONSUMER TO INCUR A NEW OR ADDED DEBT BURDEN SOLELY BY  
3 IDENTIFYING A PAYEE AND ENDORSING THE CHECK.

4 (B) AN UNSOLICITED CHECK IN A FIXED AMOUNT THAT WOULD ENABLE  
5 THE CONSUMER TO INCUR A NEW OR ADDED DEBT SOLELY BY ENDORSING THE  
6 CHECK.

7 Enacting section 1. This amendatory act does not take  
8 effect unless Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_  
9 (request no. 05990'98 a \*) of the 89th Legislature is enacted  
10 into law.