

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 779

A bill to amend 1939 PA 21, entitled
"Regulatory loan act,"
by amending sections 1 and 12 (MCL 493.1 and 493.12), as amended
by 2001 PA 270, and by adding sections 9a, 9b, 9c, 9d, 9e, 9f,
and 9g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) This act shall be known and may be cited as the
2 "regulatory loan act".

3 (2) As used in this act:

4 (a) "Advertising" means publishing or broadcasting, or caus-
5 ing to be published or broadcast, material that has been prepared
6 for public distribution by means of newspapers, magazines, or
7 electronic media. Advertising does not include a stockholder
8 communication, such as an annual report, interim financial
9 report, registration statement, security, prospectus, application

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1 for listing a security on a stock exchange, or proxy materials.
2 Advertising does not include a communication addressed to a
3 person who has previously executed a loan agreement relative to
4 that person's account.

5 (b) "Assets" means liquid assets, collectible loans made in
6 accordance with this act, and personal property acquired in the
7 general conduct of business transacted under this act.

8 (c) "Commissioner" means the commissioner of the office of
9 financial and insurance services in the department of consumer
10 and industry services.

11 (D) "CONTROL PERSON" MEANS A DIRECTOR OR EXECUTIVE OFFICER
12 OF A LICENSEE OR A PERSON WHO HAS THE AUTHORITY TO PARTICIPATE IN
13 THE DIRECTION, DIRECTLY OR INDIRECTLY THROUGH 1 OR MORE OTHER
14 PERSONS, OF THE MANAGEMENT OR POLICIES OF A LICENSEE.

15 (E) "EXECUTIVE OFFICER" MEANS AN OFFICER, MEMBER, OR PARTNER
16 OF A LICENSEE, INCLUDING CHIEF EXECUTIVE OFFICER, PRESIDENT, VICE
17 PRESIDENT, CHIEF FINANCIAL OFFICER, CONTROLLER, COMPLIANCE OFFI-
18 CER, OR ANY OTHER SIMILAR POSITION.

19 (F) "FINANCIAL LICENSING ACT" MEANS ANY ACT LISTED IN SEC-
20 TION 2 OF THE CONSUMER FINANCIAL SERVICES ACT, 1988 PA 161, MCL
21 487.2052.

22 (G) "LICENSE" MEANS A SINGLE LICENSE ISSUED TO A SINGLE
23 PLACE OF BUSINESS.

24 (H) ~~(d)~~ "Licensee" means a person licensed or required to
25 be licensed under this act.

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1 (I) ~~(e)~~ "Liquid assets" means cash, unrestricted deposits
2 in banks, and readily marketable securities at their then market
3 value.

4 (J) "LOAN" OR "REGULATORY LOAN" MEANS A LOAN MADE BY A
5 LICENSEE TO AN INDIVIDUAL FOR PERSONAL, FAMILY, OR HOUSEHOLD USE.

6 (K) ~~(f)~~ "Person" means an individual, partnership, associ-
7 ation, corporation, limited liability company, or other legal
8 entity.

9 SEC. 9A. (1) IF IN THE OPINION OF THE COMMISSIONER A
10 LICENSEE IS, HAS, OR IS ABOUT TO ENGAGE IN A PRACTICE THAT POSES
11 A THREAT OF FINANCIAL LOSS OR THREAT TO THE PUBLIC WELFARE OR IS,
12 HAS, OR IS ABOUT TO VIOLATE A LAW OR RULE, THE COMMISSIONER MAY
13 SERVE A NOTICE OF INTENTION TO ISSUE A CEASE AND DESIST ORDER AS
14 PROVIDED IN SUBSECTION (2).

15 (2) A NOTICE SERVED UNDER THIS SECTION SHALL CONTAIN A
16 STATEMENT OF THE FACTS CONSTITUTING THE ALLEGED PRACTICE OR VIO-
17 LATION AND FIX A TIME AND PLACE AT WHICH A HEARING WILL BE HELD
18 TO DETERMINE WHETHER AN ORDER TO CEASE AND DESIST SHOULD BE
19 ISSUED AGAINST THE LICENSEE.

20 (3) IF THE LICENSEE FAILS TO APPEAR AT THE HEARING BY A DULY
21 AUTHORIZED REPRESENTATIVE, THE LICENSEE SHALL HAVE CONSENTED TO
22 THE ISSUANCE OF THE CEASE AND DESIST ORDER.

23 (4) IN THE EVENT OF CONSENT UNDER SUBSECTION (3) OR IF, UPON
24 THE RECORD MADE AT THE HEARING, THE COMMISSIONER FINDS THAT THE
25 PRACTICE OR VIOLATION SPECIFIED IN THE NOTICE HAS BEEN ESTAB-
26 LISHED, THE COMMISSIONER MAY SERVE UPON THE LICENSEE AN ORDER TO
27 CEASE AND DESIST FROM THE PRACTICE OR VIOLATION. THE ORDER MAY

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1 REQUIRE THE LICENSEE AND ITS OFFICERS, DIRECTORS, MEMBERS,
2 PARTNERS, TRUSTEES, EMPLOYEES, AGENTS, AND CONTROL PERSONS TO
3 CEASE AND DESIST FROM THE PRACTICE OR VIOLATION AND TO TAKE
4 AFFIRMATIVE ACTION TO CORRECT THE CONDITIONS RESULTING FROM THE
5 PRACTICE OR VIOLATION.

6 (5) EXCEPT AS PROVIDED IN SUBSECTION (6) OR TO THE EXTENT IT
7 IS STAYED, MODIFIED, TERMINATED, OR SET ASIDE BY THE COMMISSIONER
8 OR A COURT, A CEASE AND DESIST ORDER SHALL BECOME EFFECTIVE ON
9 THE DATE OF SERVICE.

10 (6) A CEASE AND DESIST ORDER ISSUED UPON CONSENT SHALL
11 BECOME EFFECTIVE AT THE TIME SPECIFIED IN THE ORDER AND REMAIN
12 EFFECTIVE AND ENFORCEABLE AS PROVIDED IN THE ORDER.

13 SEC. 9B. (1) AS PROVIDED IN SECTION 10, THE COMMISSIONER
14 MAY INVESTIGATE OR CONDUCT AN EXAMINATION OF ANY PERSON AND CON-
15 DUCT HEARINGS AS THE COMMISSIONER CONSIDERS NECESSARY TO DETER-
16 MINE WHETHER A LICENSEE OR ANY OTHER PERSON HAS VIOLATED THIS
17 ACT, OR WHETHER A LICENSEE HAS CONDUCTED BUSINESS IN A MANNER
18 THAT WOULD JUSTIFY SUSPENSION OR REVOCATION OF ITS LICENSE.

19 (2) UPON THE FILING OF A COMPLAINT OR THE TAKING OF ACTION
20 AGAINST A LICENSEE UNDER SECTION 9C, THE COMMISSIONER MAY ISSUE
21 AND SERVE UPON A LICENSEE AN ORDER SUSPENDING THAT PERSON'S
22 LICENSE. THE ORDER SHALL BE SUPPORTED BY AN AFFIDAVIT FROM A
23 PERSON FAMILIAR WITH THE FACTS SET FORTH IN THE AFFIDAVIT AND
24 SHALL CONTAIN INFORMATION THAT AN IMMINENT THREAT OF FINANCIAL
25 LOSS OR THREAT TO THE PUBLIC WELFARE EXISTS.

26 (3) UPON SERVICE OF THE ORDER UNDER SUBSECTION (2), THE
27 LICENSEE SHALL HAVE 20 DAYS TO FILE WITH THE COMMISSIONER A

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1 REQUEST FOR A HEARING. THE HEARING SHALL BE SCHEDULED WITHIN 20
2 DAYS OF THE RECEIPT OF A REQUEST FILED UNDER THIS SUBSECTION.

3 (4) A SUSPENSION OF A LICENSE UNDER THIS SECTION SHALL CON-
4 TINUE UNTIL THE COMMISSIONER FINDS THAT THE THREAT OF FINANCIAL
5 LOSS OR THREAT TO THE PUBLIC WELFARE NO LONGER EXISTS.

6 SEC. 9C. (1) IF IN THE OPINION OF THE COMMISSIONER A PERSON
7 HAS ENGAGED IN FRAUD, THE COMMISSIONER MAY SERVE UPON THAT PERSON
8 A WRITTEN NOTICE OF INTENTION TO PROHIBIT THAT PERSON FROM BEING
9 EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF A LICENSEE UNDER
10 THIS ACT OR A LICENSEE OR REGISTRANT UNDER A FINANCIAL LICENSING
11 ACT. FOR PURPOSES OF THIS SECTION, "FRAUD" SHALL INCLUDE ACTION-
12 ABLE FRAUD, ACTUAL OR CONSTRUCTIVE FRAUD, CRIMINAL FRAUD, EXTRIN-
13 SIC OR INTRINSIC FRAUD, FRAUD IN THE EXECUTION, IN THE INDUCE-
14 MENT, IN FACT, OR IN LAW, OR ANY OTHER FORM OF FRAUD.

15 (2) A NOTICE ISSUED UNDER SUBSECTION (1) SHALL CONTAIN A
16 STATEMENT OF THE FACTS SUPPORTING THE PROHIBITION AND, EXCEPT AS
17 PROVIDED UNDER SUBSECTION (7), SET A HEARING TO BE HELD NOT MORE
18 THAN 60 DAYS AFTER THE DATE OF THE NOTICE. IF THE PERSON DOES
19 NOT APPEAR AT THE HEARING, HE OR SHE IS CONSIDERED TO HAVE CON-
20 SENTED TO THE ISSUANCE OF AN ORDER IN ACCORDANCE WITH THE
21 NOTICE.

22 (3) IF AFTER A HEARING HELD UNDER SUBSECTION (2) THE COMMIS-
23 SIONER FINDS THAT ANY OF THE GROUNDS SPECIFIED IN THE NOTICE HAVE
24 BEEN ESTABLISHED, THE COMMISSIONER MAY ISSUE AN ORDER OF SUSPEN-
25 SION OR PROHIBITION FROM BEING A LICENSEE OR REGISTRANT OR FROM
26 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY LICENSEE

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1 UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A FINANCIAL
2 LICENSING ACT.

3 (4) AN ORDER ISSUED UNDER SUBSECTION (2) OR (3) IS EFFECTIVE
4 UPON SERVICE UPON THE PERSON. THE COMMISSIONER SHALL ALSO SERVE
5 A COPY OF THE ORDER UPON THE LICENSEE OF WHICH THE PERSON IS AN
6 EMPLOYEE, AGENT, OR CONTROL PERSON. THE ORDER REMAINS IN EFFECT
7 UNTIL IT IS STAYED, MODIFIED, TERMINATED, OR SET ASIDE BY THE
8 COMMISSIONER OR A REVIEWING COURT.

9 (5) AFTER 5 YEARS FROM THE DATE OF AN ORDER ISSUED UNDER
10 SUBSECTION (2) OR (3), THE PERSON SUBJECT TO THE ORDER MAY APPLY
11 TO THE COMMISSIONER TO TERMINATE THE ORDER.

12 (6) IF THE COMMISSIONER CONSIDERS THAT A PERSON SERVED A
13 NOTICE UNDER SUBSECTION (1) POSES AN IMMINENT THREAT OF FINANCIAL
14 LOSS TO APPLICANTS FOR LOANS, MORTGAGE LOANS, SECONDARY MORTGAGE
15 LOANS, CREDIT CARD ARRANGEMENTS, OR INSTALLMENT SALES CREDIT,
16 BORROWERS ON LOANS, OBLIGORS ON INSTALLMENT SALE CONTRACTS, LOAN
17 SERVICING CUSTOMERS, PURCHASERS OF MORTGAGE LOANS OR INTERESTS IN
18 MORTGAGE LOANS, OR PURCHASERS OF CHECKS FROM A LICENSEE, THE COM-
19 MISSIONER MAY SERVE UPON THE PERSON AN ORDER OF SUSPENSION FROM
20 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY
21 LICENSEE. THE SUSPENSION IS EFFECTIVE ON THE DATE THE ORDER IS
22 ISSUED AND, UNLESS STAYED BY A COURT, REMAINS IN EFFECT PENDING
23 THE COMPLETION OF A REVIEW AS PROVIDED UNDER THIS SECTION AND THE
24 COMMISSIONER HAS DISMISSED THE CHARGES SPECIFIED IN THE ORDER.

25 (7) UNLESS OTHERWISE AGREED TO BY THE COMMISSIONER AND THE
26 PERSON SERVED WITH AN ORDER ISSUED UNDER SUBSECTION (6), THE
27 HEARING REQUIRED UNDER SUBSECTION (2) TO REVIEW THE SUSPENSION

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1 SHALL BE HELD NOT EARLIER THAN 5 DAYS OR LATER THAN 20 DAYS AFTER
2 THE DATE OF THE NOTICE.

3 (8) IF A PERSON IS CONVICTED OF A FELONY INVOLVING FRAUD,
4 DISHONESTY, OR BREACH OF TRUST, THE COMMISSIONER MAY ISSUE AN
5 ORDER SUSPENDING OR PROHIBITING THAT PERSON FROM BEING A LICENSEE
6 AND FROM BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY
7 LICENSEE UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A
8 FINANCIAL LICENSING ACT. AFTER 5 YEARS FROM THE DATE OF THE
9 ORDER, THE PERSON SUBJECT TO THE ORDER MAY APPLY TO THE COMMIS-
10 SIONER TO TERMINATE THE ORDER.

11 (9) THE COMMISSIONER SHALL MAIL A COPY OF ANY NOTICE OR
12 ORDER ISSUED UNDER THIS SECTION TO THE LICENSEE OF WHICH THE
13 PERSON SUBJECT TO THE NOTICE OR ORDER IS AN EMPLOYEE, AGENT, OR
14 CONTROL PERSON.

15 SEC. 9D. (1) A HEARING UNDER SECTIONS 9, 9A, AND 9C SHALL
16 BE CONDUCTED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
17 1969 PA 306, MCL 24.201 TO 24.328. WITHIN 30 DAYS AFTER THE COM-
18 MISSIONER HAS NOTIFIED THE PARTIES THAT THE CASE HAS BEEN SUBMIT-
19 TED TO HIM OR HER FOR FINAL DECISION, THE COMMISSIONER SHALL
20 RENDER A DECISION THAT SHALL INCLUDE FINDINGS OF FACT SUPPORTING
21 THE DECISION AND SERVE UPON EACH PARTY TO THE PROCEEDING A COPY
22 OF THE DECISION AND AN ORDER CONSISTENT WITH THE DECISION.

23 (2) EXCEPT FOR A CONSENT ORDER, A PARTY TO THE PROCEEDING OR
24 A PERSON AFFECTED BY AN ORDER ISSUED UNDER SECTIONS 9, 9A, AND 9C
25 MAY OBTAIN A JUDICIAL REVIEW OF THE ORDER. A CONSENT ORDER MAY
26 BE REVIEWED AS PROVIDED UNDER THE ADMINISTRATIVE PROCEDURES ACT
27 OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. EXCEPT FOR AN ORDER

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1 UNDER JUDICIAL REVIEW, THE COMMISSIONER MAY TERMINATE OR SET
2 ASIDE ANY ORDER. THE COMMISSIONER MAY TERMINATE OR SET ASIDE AN
3 ORDER UNDER JUDICIAL REVIEW WITH THE PERMISSION OF THE COURT.

4 (3) UNLESS ORDERED BY THE COURT, THE COMMENCEMENT OF PRO-
5 CEEDINGS FOR JUDICIAL REVIEW UNDER SUBSECTION (2) DOES NOT STAY
6 THE COMMISSIONER'S ORDER.

7 SEC. 9E. THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT OF
8 INGHAM COUNTY FOR THE ENFORCEMENT OF ANY OUTSTANDING ORDER ISSUED
9 UNDER SECTION 9, 9A, 9B, OR 9C.

10 SEC. 9F. ANY CURRENT OR FORMER EXECUTIVE OFFICER, DIRECTOR,
11 AGENT, OR CONTROL PERSON WHO VIOLATES A FINAL ORDER ISSUED UNDER
12 SECTION 9C IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT
13 MORE THAN \$5,000.00 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR
14 BOTH.

15 SEC. 9G. A CONTROL PERSON WHO IS SUBJECT TO AN ORDER ISSUED
16 UNDER SECTION 9C AND WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS
17 IS NOT IN VIOLATION OF THE ORDER:

18 (A) THE CONTROL PERSON SHALL NOT IN ANY MANNER, DIRECTLY OR
19 INDIRECTLY, PARTICIPATE IN THE CONTROL OF A LICENSEE AFTER THE
20 DATE THE ORDER IS ISSUED.

21 (B) THE CONTROL PERSON SHALL WITHIN 6 MONTHS AFTER THE DATE
22 THE ORDER IS FINAL TRANSFER ANY INTEREST THE CONTROL PERSON OWNS
23 IN A LICENSEE TO AN UNRELATED THIRD PARTY.

24 Sec. 12. (1) A licensee or other person shall not adver-
25 tise, print, display, publish, distribute, or broadcast or cause
26 or permit to be advertised, printed, displayed, published,
27 distributed, or broadcast, in any manner whatsoever a false,

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1 misleading, or deceptive statement or representation with regard
2 to the rates, terms, or conditions for the lending of money,
3 credit, goods, or things in action.

4 (2) A licensee shall not take a lien upon real estate as
5 security for a loan made under this act, except a lien acquired
6 by execution or otherwise after the entry of a judgment.

7 (3) A licensee shall not take a confession of judgment or a
8 power of attorney to appear or to confess judgment on behalf of a
9 borrower. A licensee shall not take a note or evidence of
10 indebtedness that does not accurately disclose the actual amount
11 of the loan, the time for which it is made, and the agreed rate
12 of charge, or an instrument in which blanks are left to be filled
13 in after execution.

14 (4) A licensee shall not discriminate against a person in
15 the extension of credit on the basis of sex or marital status.

16 (5) EXCEPT AS PROVIDED UNDER SECTION 9G, A LICENSEE SHALL
17 NOT KNOWINGLY PERMIT A PERSON TO VIOLATE AN ORDER THAT HAS BEEN
18 ISSUED UNDER THIS ACT OR ANY OTHER FINANCIAL LICENSING ACT THAT
19 PROHIBITS THAT PERSON FROM BEING EMPLOYED BY, AN AGENT OF, OR A
20 CONTROL PERSON OF THE LICENSEE.