

HOUSE BILL No. 6121

May 23, 2002, Introduced by Reps. Richner, Bishop, Bisbee, Middaugh and Rivet and referred to the Committee on Commerce.

A bill to prohibit certain lending practices; to require disclosure of certain information for home loans; to prescribe certain duties and obligations of the lender in a home loan transaction; to prescribe the powers and duties of certain state agencies and officials; and to prescribe penalties and provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "consumer mortgage protection act".

3 Sec. 2. As used in this act:

4 (a) "Commissioner" means the commissioner of the office of
5 financial and insurance services of the department of consumer
6 and industry services.

1 (b) "Depository institution" means a bank, savings and loan
2 association, savings bank, or a credit union chartered under
3 state or federal law.

4 (c) "Home improvement installment contract" means an agree-
5 ment of 1 or more documents covering the sale of goods or fur-
6 nishing of services to a buyer for improvements to the buyer's
7 principal dwelling located in this state used for occupancy of 4
8 or fewer families under which the buyer promises to pay in
9 installments all or any part of the price of the goods or
10 services.

11 (d) "Mortgage loan" means a loan or home improvement
12 installment contract secured by a first or subordinate mortgage
13 or any other form of lien or a land contract covering real prop-
14 erty located in this state used as the borrower's principal
15 dwelling and designed for occupancy by 4 or fewer families.
16 Mortgage loan does not include any of the following:

17 (i) Loans in which the proceeds are used to acquire the
18 dwelling.

19 (ii) Reverse-mortgage transactions.

20 (iii) An open-end credit plan being a loan in which the
21 lender reasonably contemplates repeated advances.

22 (e) "Person" means an individual, corporation, partnership,
23 association, governmental entity, or any other legal entity.

24 (f) "Reverse-mortgage" means a nonrecourse loan under which
25 both of the following apply:

26 (i) A mortgage or other form of lien securing 1 or more
27 advances is created in the borrower's principal dwelling.

1 (ii) The principal, interest, or shared appreciation or
2 equity is payable only after the borrower dies, the dwelling is
3 transferred, or the borrower ceases to occupy the dwelling as a
4 principal dwelling.

5 (g) "Regulated lender" means a depository institution or a
6 licensee or a registrant under the consumer financial services
7 act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379,
8 MCL 493.101 to 493.114, the motor vehicle sales finance act, 1950
9 (Ex Sess) PA 27, MCL 492.101 to 492.141, the secondary mortgage
10 loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage bro-
11 kers, lenders, and servicers licensing act, 1987 PA 173,
12 MCL 445.1651 to 445.1684, and a seller under the home improvement
13 finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

14 (h) "State and federal laws" means, individually and collec-
15 tively, 1 or more of the laws or regulations of this state or the
16 federal government which regulate or are applicable to a mortgage
17 loan or a person when brokering, making, servicing, or collecting
18 a mortgage loan, including, without limitation, the federal truth
19 in lending act, title I of the consumer credit protection act,
20 Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615,
21 1631 to 1635, 1637 to 1649, and 1661 to 1667f, real estate set-
22 tlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724,
23 equal credit opportunity act, title VII of the consumer credit
24 protection act, Public Law 90-321, 15 U.S.C. 1691 to 1691f, fair
25 housing act, title VIII of the civil rights act of 1968, Public
26 Law 90-284, 82 Stat. 81, fair credit report act, title VI of the
27 consumer credit protection act, Public Law 90-321, 15 U.S.C. 1681

1 to 1681v, the homeowners protection act of 1998, Public Law
2 105-216, 112 Stat. 897, the fair debt collection practices act,
3 title VIII of the consumer credit protection act, Public Law
4 90-321, 15 U.S.C. 1601nt and 1692 to 1692o, consumer financial
5 services act, 1988 PA 161, MCL 487.2051 to 487.2072, mortgage
6 brokers, lenders, and servicers licensing act, 1987 PA 173,
7 MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981
8 PA 125, MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601 to
9 445.1614, and home improvement finance act, 1965 PA 332,
10 MCL 445.1101 to 445.1422.

11 Sec. 3. A person shall broker, make, or service mortgage
12 loans in accordance with all applicable state and federal laws.

13 Sec. 4. (1) A person offering to make or making a mortgage
14 loan shall not do either of the following:

15 (a) Charge a fee for a product or service if the product or
16 service is not actually provided to the customer.

17 (b) Misrepresent the amount charged by or paid to a third
18 party for a product or service.

19 (2) A person, appraiser, or real estate agent shall not
20 make, directly or indirectly, any false, deceptive, or misleading
21 statement or representation in connection with a mortgage loan
22 including, but not limited to, the borrower's ability to qualify
23 for a mortgage loan or the value of the dwelling that will secure
24 repayment of the mortgage loan.

25 (3) A statement or representation is deceptive or misleading
26 if it has the capacity to deceive or mislead a borrower or
27 potential borrower. The commissioner shall consider any of the

1 following factors in deciding whether a statement or
2 misrepresentation is deceptive or misleading:

3 (a) The overall impression that the statement or representa-
4 tion reasonably creates.

5 (b) The particular type of audience to which the statement
6 is directed.

7 (c) Whether it may be reasonably comprehended by the segment
8 of the public to which the statement is directed.

9 (4) A person shall not directly or indirectly compensate,
10 coerce, or intimidate an appraiser for the purpose of influencing
11 the independent judgment of the appraiser with respect to the
12 value of the dwelling offered as security for repayment of the
13 mortgage loan.

14 Sec. 5. The commissioner may conduct examinations and
15 investigations of a person over whom the commissioner has regula-
16 tory authority as necessary to determine whether the person is
17 brokering, making, servicing, or collecting mortgage loans as
18 required by this act.

19 Sec. 6. If the commissioner determines that a person is
20 brokering, making, servicing, or collecting mortgage loans in
21 violation of this act, the commissioner shall do 1 or more of the
22 following:

23 (a) Initiate a cause of action under section 7.

24 (b) If the person is chartered, licensed, registered, regu-
25 lated, or administered by the commissioner under a law of this
26 state, the commissioner shall enforce the penalties and remedies
27 under that law.

1 (c) Forward a complaint to the appropriate regulatory or
2 investigatory authority.

3 Sec. 7. The attorney general or the prosecuting attorney
4 for the county where an alleged violation occurred may bring an
5 action against a person to do 1 or more of the following:

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

8 (b) Enjoin a person who is engaging or about to engage in a
9 method, act, or practice that is a violation of this act.

10 (c) Obtain a civil fine of not more than \$10,000.00 for the
11 first offense and not more than \$20,000.00 for the second and any
12 subsequent offense.

13 Sec. 8. (1) A person is not liable for a violation under
14 section 7 if the person shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of
15 procedures reasonably adopted to avoid the error. Examples of a
16 bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not
17 a bona fide error.

18 (2) A person is not liable for a violation under section 7
19 if, within 60 days after discovery of the violation and before
20 the institution of an action under section 7, the person notifies
21 the borrower or buyer of the violation and corrects the violation
22 in a manner that, to the extent it is reasonably possible to do
23 so, restores the borrower or buyer to the position in which the
24 so, restores the borrower or buyer to the position in which the
25 so, restores the borrower or buyer to the position in which the
26 so, restores the borrower or buyer to the position in which the

1 borrower or buyer would have been if the violation had not
2 occurred.

3 (3) The person alleged to have violated this act has the
4 burden of proving that he or she is not liable as provided under
5 this section.

6 Sec. 9. This act does not limit the authority of the com-
7 missioner, the attorney general, or a county prosecutor to
8 enforce any law under which a person is chartered, organized,
9 licensed, registered, regulated, or otherwise authorized to do
10 business in this state.

11 Sec. 10. (1) No later than March 1, 2003, the office of
12 financial and insurance services shall develop and make available
13 to local units of government, financial institutions, and other
14 interested persons 1 or more model programs for financial
15 education.

16 (2) The program required under this section shall be
17 designed to teach personal financial management skills and the
18 basic principles involved with saving, borrowing, investing, and
19 protection against predatory and other fraudulent lending
20 practices.

21 Sec. 11. (1) The federal government and state solely regu-
22 late the business of brokering, making, servicing, and collecting
23 mortgage loans in this state and the manner in which any such
24 business is conducted.

25 (2) Any charter, ordinance, resolution, regulation, rule, or
26 other action by a municipal corporation or other political
27 subdivision of this state to regulate, directly or indirectly,

1 the brokering, making, servicing, or collecting of mortgage loans
2 constitutes a statutory conflict with the uniform operation
3 throughout the state of residential mortgage lending and is
4 preempted.

5 (3) Any charter, ordinance, resolution, regulation, rule, or
6 other action by a municipal corporation or other political subdi-
7 vision of this state that attempts to regulate the brokering,
8 making, servicing, or collecting of mortgage loans constitutes a
9 statutory conflict and is preempted, including, without limita-
10 tion, if the ordinance, resolution, regulation, or other action
11 does either of the following:

12 (a) Disqualifies a person, or its subsidiaries or affili-
13 ates, from doing business with the municipal corporation or other
14 political subdivision based upon the acts or practices of the
15 person or its subsidiaries or affiliates in brokering, making,
16 servicing, or collecting mortgage loans.

17 (b) Imposes reporting requirements or other obligations upon
18 a person, or its subsidiaries or affiliates, based upon the
19 person's, or its subsidiaries' or affiliates', acts or practices
20 in brokering, making, servicing, or collecting mortgage loans.

21 (4) If any provision of this section, or any application of
22 any provision of this section, is for any reason held to be ille-
23 gal or invalid, the illegality or invalidity shall not affect any
24 legal and valid provision or application of this section, and the
25 provisions and applications of this section shall be severable.

26 Sec. 12. (1) The laws of this state relating to the
27 brokering, making, servicing, and collecting of mortgage loans

1 prescribe rules of conduct upon citizens generally, comprise a
2 comprehensive regulatory framework intended to operate uniformly
3 throughout the state under the same circumstances and conditions,
4 and constitute general laws of this state.

5 (2) Silence in the statutes of this state with respect to
6 any act or practice in the brokering, making, servicing, or col-
7 lecting of mortgage loans shall not be interpreted to mean that
8 the state has not completely occupied the field or has only set
9 minimum standards in its regulation of brokering, making, servic-
10 ing, or collecting of mortgage loans.

11 (3) It is the intent of the legislature to entirely preempt
12 municipal corporations and other political subdivisions from the
13 regulation and licensing of persons engaged in the brokering,
14 making, servicing, or collecting of mortgage loans in this
15 state.