

SENATE BILL No. 776

October 23, 2001, Introduced by Senators STEIL, GARCIA, GOSCHKA, HART, NORTH and VAN REGENMORTER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1988 PA 161, entitled
"Consumer financial services act,"
by amending sections 2 and 17 (MCL 487.2052 and 487.2067), as
amended by 1999 PA 275, and by adding sections 10f, 10g, 10h,
10i, 10j, and 10k.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Applicant" means a person that has applied to the com-
3 missioner to be licensed under this act.

4 (b) "Bureau" means the ~~financial institutions bureau~~
5 OFFICE OF FINANCIAL AND INSURANCE SERVICES of the department of
6 consumer and industry services.

7 (c) "Business activity" means any activity regulated by any
8 of the financial licensing acts identified under subdivision

9 (d).

1 (d) "Class I license" means a license issued under this act
2 that authorizes the licensee to engage in all of the activities
3 permitted under the regulatory loan act of 1963, 1939 PA 21, MCL
4 493.1 to ~~493.26~~ 493.25, the secondary mortgage loan act, 1981
5 PA 125, MCL 493.51 to 493.81, the motor vehicle sales finance
6 act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379,
7 MCL 493.101 to 493.114, the sale of checks act, 1960 PA 136, MCL
8 487.901 to 487.916, or the mortgage brokers, lenders, and servic-
9 ers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

10 (e) "Class II license" means a license issued under this act
11 that authorizes all of the activities permitted under a class I
12 license except for activities permitted under the sale of checks
13 act, 1960 PA 136, MCL 487.901 to 487.916, loan servicing activi-
14 ties under the secondary mortgage loan act, 1981 PA 125, MCL
15 493.51 to 493.81, or the mortgage brokers, lenders, and servicers
16 licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

17 (f) "Commissioner" means the commissioner of the ~~financial~~
18 ~~institutions bureau~~ OFFICE OF FINANCIAL AND INSURANCE SERVICES
19 or an authorized representative of the commissioner.

20 (G) "CONTROL PERSON" MEANS A DIRECTOR OR EXECUTIVE OFFICER
21 OF A LICENSEE OR A PERSON WHO HAS THE AUTHORITY TO PARTICIPATE IN
22 THE DIRECTION, DIRECTLY OR INDIRECTLY THROUGH 1 OR MORE OTHER
23 PERSONS, OF THE MANAGEMENT OR POLICIES OF A LICENSEE.

24 (H) ~~(g)~~ "Depository financial institution" means a bank,
25 savings and loan association, savings bank, or credit union orga-
26 nized under the laws of this state, another state, the District
27 of Columbia, the United States, or a territory or protectorate of

1 the United States, whose deposits are insured by an agency of the
2 federal government.

3 (I) "EXECUTIVE OFFICER" MEANS AN OFFICER, MEMBER, OR PARTNER
4 OF A LICENSEE, INCLUDING CHIEF EXECUTIVE OFFICER, PRESIDENT, VICE
5 PRESIDENT, CHIEF FINANCIAL OFFICER, CONTROLLER, COMPLIANCE OFFI-
6 CER, OR ANY OTHER SIMILAR POSITION.

7 (J) ~~(h)~~ "Financial licensing acts" means the acts listed
8 in subdivision (d).

9 (K) ~~(i)~~ "Licensee" means a person that is licensed under
10 this act.

11 (l) ~~(j)~~ "Loan servicing activities" means the collection
12 or remittance for a lender, noteowner, noteholder, or the
13 licensee's own account of 4 or more installment payments of the
14 principal, interest, or an amount placed in escrow under a mort-
15 gage servicing agreement or a mortgage loan subject to the mort-
16 gage brokers, lenders, and servicers licensing act, 1987 PA 173,
17 MCL 445.1651 to 445.1684, or a mortgage servicing agreement or
18 secondary mortgage loan subject to the secondary mortgage loan
19 act, 1981 PA 125, MCL 493.51 to 493.81, or an agreement with the
20 mortgagor.

21 (M) ~~(k)~~ "Person" means an individual, corporation, part-
22 nership, association, limited liability company, or any other
23 legal entity.

24 SEC. 10F. (1) AS PROVIDED IN SECTION 10(4), THE COMMIS-
25 SIONER MAY INVESTIGATE OR CONDUCT AN EXAMINATION OF ANY PERSON
26 AND CONDUCT HEARINGS AS THE COMMISSIONER CONSIDERS NECESSARY TO
27 DETERMINE WHETHER A LICENSEE OR ANY OTHER PERSON HAS VIOLATED

1 THIS ACT, OR WHETHER A LICENSEE HAS CONDUCTED BUSINESS IN A
2 MANNER THAT WOULD JUSTIFY SUSPENSION OR REVOCATION OF ITS
3 LICENSE.

4 (2) UPON THE FILING OF A COMPLAINT OR THE TAKING OF ACTION
5 AGAINST A LICENSEE UNDER SECTION 10(7), THE COMMISSIONER MAY
6 ISSUE AND SERVE UPON A LICENSEE AN ORDER SUSPENDING THAT PERSON'S
7 LICENSE. THE ORDER SHALL BE SUPPORTED BY AN AFFIDAVIT FROM A
8 PERSON FAMILIAR WITH THE FACTS SET FORTH IN THE AFFIDAVIT AND
9 SHALL CONTAIN INFORMATION THAT AN IMMINENT THREAT OF FINANCIAL
10 LOSS OR THREAT TO THE PUBLIC WELFARE EXISTS.

11 (3) UPON SERVICE OF THE ORDER UNDER SUBSECTION (2), THE
12 LICENSEE SHALL HAVE 20 DAYS TO FILE WITH THE COMMISSIONER A
13 REQUEST FOR A HEARING. THE HEARING SHALL BE SCHEDULED WITHIN 20
14 DAYS OF THE RECEIPT OF A REQUEST FILED UNDER THIS SUBSECTION.

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

18 SEC. 10G. (1) IF IN THE OPINION OF THE COMMISSIONER A
19 PERSON HAS ENGAGED IN FRAUD, THE COMMISSIONER MAY SERVE UPON THAT
20 PERSON A WRITTEN NOTICE OF INTENTION TO PROHIBIT THAT PERSON FROM
21 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF A LICENSEE
22 UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A FINANCIAL
23 LICENSING ACT. FOR PURPOSES OF THIS SECTION, "FRAUD" SHALL
24 INCLUDE ACTIONABLE FRAUD, ACTUAL OR CONSTRUCTIVE FRAUD, CRIMINAL
25 FRAUD, EXTRINSIC OR INTRINSIC FRAUD, FRAUD IN THE EXECUTION, IN
26 THE INDUCEMENT, IN FACT, OR IN LAW, OR ANY OTHER FORM OF FRAUD.

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

8 (3) IF AFTER A HEARING HELD UNDER SUBSECTION (2) THE COMMIS-
9 SIONER FINDS THAT ANY OF THE GROUNDS SPECIFIED IN THE NOTICE HAVE
10 BEEN ESTABLISHED, THE COMMISSIONER MAY ISSUE AN ORDER OF SUSPEN-
11 SION OR PROHIBITION FROM BEING A LICENSEE OR REGISTRANT OR FROM
12 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY LICENSEE
13 UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A FINANCIAL
14 LICENSING ACT.

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

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

24 (6) IF THE COMMISSIONER CONSIDERS THAT A PERSON SERVED A
25 NOTICE UNDER SUBSECTION (1) POSES AN IMMINENT THREAT OF FINANCIAL
26 LOSS TO APPLICANTS FOR LOANS, MORTGAGE LOANS, SECONDARY MORTGAGE
27 LOANS, CREDIT CARD ARRANGEMENTS, OR INSTALLMENT SALES CREDIT,

1 BORROWERS ON LOANS, OBLIGORS ON INSTALLMENT SALE CONTRACTS, LOAN
2 SERVICING CUSTOMERS, PURCHASERS OF MORTGAGE LOANS OR INTERESTS IN
3 MORTGAGE LOANS, OR PURCHASERS OF CHECKS FROM A LICENSEE, THE COM-
4 MISSIONER MAY SERVE UPON THE PERSON AN ORDER OF SUSPENSION FROM
5 BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY
6 LICENSEE. THE SUSPENSION IS EFFECTIVE ON THE DATE THE ORDER IS
7 ISSUED AND, UNLESS STAYED BY A COURT, REMAINS IN EFFECT PENDING
8 THE COMPLETION OF A REVIEW AS PROVIDED UNDER THIS SECTION AND THE
9 COMMISSIONER HAS DISMISSED THE CHARGES SPECIFIED IN THE ORDER.

10 (7) UNLESS OTHERWISE AGREED TO BY THE COMMISSIONER AND THE
11 PERSON SERVED WITH AN ORDER ISSUED UNDER SUBSECTION (6), THE
12 HEARING REQUIRED UNDER SUBSECTION (2) TO REVIEW THE SUSPENSION
13 SHALL BE HELD NOT EARLIER THAN 5 DAYS OR LATER THAN 20 DAYS AFTER
14 THE DATE OF THE NOTICE.

15 (8) IF A PERSON IS CONVICTED OF A FELONY INVOLVING FRAUD,
16 DISHONESTY, OR BREACH OF TRUST, THE COMMISSIONER MAY ISSUE AN
17 ORDER SUSPENDING OR PROHIBITING THAT PERSON FROM BEING A LICENSEE
18 AND FROM BEING EMPLOYED BY, AN AGENT OF, OR CONTROL PERSON OF ANY
19 LICENSEE UNDER THIS ACT OR A LICENSEE OR REGISTRANT UNDER A
20 FINANCIAL LICENSING ACT. AFTER 5 YEARS FROM THE DATE OF THE
21 ORDER, THE PERSON SUBJECT TO THE ORDER MAY APPLY TO THE COMMIS-
22 SIONER TO TERMINATE THE ORDER.

23 (9) THE COMMISSIONER SHALL MAIL A COPY OF ANY NOTICE OR
24 ORDER ISSUED UNDER THIS SECTION TO THE LICENSEE OF WHICH THE
25 PERSON SUBJECT TO THE NOTICE OR ORDER IS AN EMPLOYEE, AGENT, OR
26 CONTROL PERSON.

1 SEC. 10H. (1) A HEARING UNDER SECTION 10 OR 10G SHALL BE
2 CONDUCTED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969
3 PA 306, MCL 24.201 TO 24.328. WITHIN 30 DAYS AFTER THE COMMIS-
4 SIONER HAS NOTIFIED THE PARTIES THAT THE CASE HAS BEEN SUBMITTED
5 TO HIM OR HER FOR FINAL DECISION, THE COMMISSIONER SHALL RENDER A
6 DECISION THAT SHALL INCLUDE FINDINGS OF FACT SUPPORTING THE DECI-
7 SION AND SERVE UPON EACH PARTY TO THE PROCEEDING A COPY OF THE
8 DECISION AND AN ORDER CONSISTENT WITH THE DECISION.

9 (2) EXCEPT FOR A CONSENT ORDER, A PARTY TO THE PROCEEDING,
10 OR A PERSON AFFECTED BY AN ORDER ISSUED UNDER SECTION 10 OR
11 SECTION 10G MAY OBTAIN A JUDICIAL REVIEW OF THE ORDER. A CONSENT
12 ORDER MAY BE REVIEWED AS PROVIDED UNDER THE ADMINISTRATIVE PROCE-
13 DURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. EXCEPT FOR
14 AN ORDER UNDER JUDICIAL REVIEW, THE COMMISSIONER MAY TERMINATE OR
15 SET ASIDE ANY ORDER. THE COMMISSIONER MAY TERMINATE OR SET ASIDE
16 AN ORDER UNDER JUDICIAL REVIEW WITH THE PERMISSION OF THE COURT.

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

20 SEC. 10I. THE COMMISSIONER MAY APPLY TO THE CIRCUIT COURT
21 OF INGHAM COUNTY FOR THE ENFORCEMENT OF ANY OUTSTANDING ORDER
22 ISSUED UNDER SECTION 10, 10F, OR 10G.

23 SEC. 10J. ANY CURRENT OR FORMER EXECUTIVE OFFICER, DIREC-
24 TOR, AGENT, OR CONTROL PERSON WHO VIOLATES A FINAL ORDER ISSUED
25 UNDER SECTION 10G IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE
26 OF NOT MORE THAN \$5,000.00 OR IMPRISONMENT FOR NOT MORE THAN 1
27 YEAR, OR BOTH.

1 SEC. 10K. A CONTROL PERSON WHO IS SUBJECT TO AN ORDER
2 ISSUED UNDER SECTION 10G(6) AND WHO MEETS ALL OF THE FOLLOWING
3 REQUIREMENTS IS NOT IN VIOLATION OF THE ORDER:

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

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

10 Sec. 17. A licensee under this act ~~is prohibited from~~
11 ~~engaging in the following activities or practices~~ SHALL NOT DO
12 ANY OF THE FOLLOWING:

13 (a) ~~The~~ ENGAGE IN THE business of a real estate broker or
14 real estate salesperson licensed under article 25 of the occupa-
15 tional code, 1980 PA 299, MCL 339.2501 to ~~339.2515~~ 339.2518.

16 (b) ~~The~~ ENGAGE IN THE business of a pawnbroker licensed
17 under 1917 PA 273, MCL 446.201 to 446.219.

18 (c) ~~The~~ ENGAGE IN THE business of a debt management com-
19 pany licensed under the debt management act, 1975 PA 148, MCL
20 451.411 to 451.437.

21 (d) Entering into a tying arrangement ~~whereby~~ THROUGH
22 WHICH the licensee conditions the sale of 1 financial service to
23 a consumer on the agreement by the consumer to purchase 1 or more
24 other financial services from the licensee, an affiliate, or sub-
25 sidiary of the licensee.

26 (E) KNOWINGLY PERMIT A PERSON TO VIOLATE AN ORDER THAT HAS
27 BEEN ISSUED UNDER THIS ACT OR ANY OTHER FINANCIAL LICENSING ACT

1 THAT PROHIBITS THAT PERSON FROM BEING EMPLOYED BY, AN AGENT OF,
2 OR A CONTROL PERSON OF THE LICENSEE.