

# HOUSE BILL No. 4470

March 20, 1989, Introduced by Reps. Stacey, Bennett, Stopczynski, Wartner, Middaugh, Dunaskiss, Giese, Randall, Ouwinga, Crandall, Gnodtke, Willis Bullard, DeLange, Krause, Bankes, Niederstadt, Clack, Alley, Griffin, Murphy, Profit and Bartnik and referred to the Committee on Corporations and Finance.

A bill to amend the title and sections 1, 23, and 24 of Act No. 125 of the Public Acts of 1981, entitled as amended

"An act to define and regulate secondary mortgage 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,"

being sections 493.51, 493.73, and 493.74 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. The title and sections 1, 23, and 24 of Act  
2 No. 125 of the Public Acts of 1981, being sections 493.51,  
3 493.73, and 493.74 of the Michigan Compiled Laws, are amended to  
4 read as follows:

## TITLE

1  
2 An act to define and regulate secondary mortgage loans AND  
3 OTHER RELATED LOANS; to prescribe powers and duties of the finan-  
4 cial institutions bureau and certain state agencies; to provide  
5 for the establishment of a financial institutions bureau opera-  
6 tions fund; to provide for the promulgation of rules; and to pro-  
7 vide for civil fines and penalties.

8 Sec. 1. As used in this act:

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

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

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

20 (d) "Secondary mortgage loan" means a loan of \$3,000.00 or  
21 more made to an individual, corporation, or partnership for per-  
22 sonal, family, or household purposes not to be repaid in 90 days  
23 or less, which ~~is~~ MAY BE secured by a mortgage upon an interest  
24 in real property used as a dwelling if the property is subject to  
25 the lien of 1 or more prior mortgages, or the purchase of an  
26 interest in an existing mortgage is made to secure the loan.  
27 Notwithstanding the place of execution, nominal or real, of a

1 secondary mortgage loan, if the real property is located in this  
2 state AND THE LOAN IS SECURED, the secondary mortgage loan is  
3 subject to this act and all other applicable laws of this state.

4       Sec. 23. (1) An instrument evidencing or securing a second-  
5 ary mortgage loan shall not contain any of the following:

6       (a) A power of attorney to confess judgment.

7       (b) A provision by which the debtor waives rights accruing  
8 under this act, any federal law, or law of this state.

9       (c) Except for instruments permitted by subsection (2), a  
10 requirement that an installment be substantially greater than a  
11 preceding installment.

12       (d) An assignment of or order for the payment of salary,  
13 wages, commissions, or other compensation for services, or any  
14 part thereof, earned or to be earned.

15       (e) Shall not compel, encourage or induce a borrower to  
16 incorporate to evade the provisions of this act.

17       (f) A provision by which a debtor agrees to pay damages  
18 absent a judgment by a court.

19       (2) A licensee may make alternative mortgage loans which  
20 defer repayment of all or part of the principal and interest for  
21 up to 2 years from the date the loan agreement is made and which  
22 permit installment payment from that principal to any holder of a  
23 prior mortgage on the real estate security. The commissioner  
24 shall promulgate rules prescribing the minimum requirements of  
25 the loans permitted by this subsection. Interest shall only  
26 accrue on dollars actually extended.

1       (3) A LICENSEE MAY MAKE UNSECURED LOANS UNDER TERMS AND  
2 CONDITIONS AUTHORIZED BY THIS ACT AND RULES PROMULGATED UNDER  
3 THIS ACT.

4       Sec. 24. A licensee shall not DO ANY OF THE FOLLOWING:

5       (a) Require the establishment of an escrow account for the  
6 purpose of paying taxes or insurance on the property which  
7 secures a secondary mortgage loan.

8       (b) Concurrently negotiate a loan under this act and under  
9 THE REGULATORY LOAN ACT OF 1963, Act No. 21 of the Public Acts of  
10 1939, as amended, being sections 493.1 to 493.26 of the Michigan  
11 Compiled Laws.

12       (c) Induce the making of a secondary mortgage loan merely to  
13 improve the strength of security on any existing indebtedness.

14       (d) Secure the mortgage with any collateral other than the  
15 real residential property which is the subject of the secondary  
16 mortgage, EXCEPT THAT A LICENSEE MAY MAKE UNSECURED LOANS AS  
17 AUTHORIZED IN SECTION 23(3).