

HOUSE BILL No. 5116

September 28, 1989, Introduced by Reps. Murphy, Harrison, Hood, Jondahl, Brown, DeMars, Gubow, Kilpatrick, Ciaramitaro, Kosteva, Berman, Saunders, Joe Young, Sr., Hunter, Gagliardi, Stupak, Varga, Bennane, Owen, Alley, Sofio, Joe Young, Jr., Bankes, Honigman, Bryant, Crandall, Stacey, Hoffman, Leland, Martin, Wallace, Stopczynski, Hertel and Perry Bullard and referred to the Committee on Corporations and Finance.

A bill to amend sections 1, 2, 6, 9, and 11 of Act No. 135 of the Public Acts of 1977, entitled

"An act to prohibit certain mortgage lending practices by a credit granting institution; to require the institution to make reports regarding its mortgage lending practices; to prescribe the powers and duties of the commissioner of the financial institutions bureau in relation to those practices; to permit the establishment of local mortgage review boards; and to provide remedies and penalties,"

being sections 445.1601, 445.1602, 445.1606, 445.1609, and 445.1611 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 2, 6, 9, and 11 of Act No. 135 of
2 the Public Acts of 1977, being sections 445.1601, 445.1602,
3 445.1606, 445.1609, and 445.1611 of the Michigan Compiled Laws,
4 are amended to read as follows:

5 Sec. 1. As used in this act:

1 (a) "Annual percentage rate" means the rate as computed
2 under the federal truth in lending act, TITLE 1 OF PUBLIC LAW
3 90-321, 15 U.S.C. 1601 to ~~+677-~~ 1608, 1610 TO 1613, 1631 TO
4 1635, 1637 TO 1638, 1640 TO 1647, AND 1661 TO 1667e.

5 (b) "Commissioner" means the commissioner of the financial
6 institutions bureau of the department of commerce.

7 (c) "Credit granting institution" means a state or nation-
8 ally chartered bank, a state or federally chartered savings and
9 loan association, a state or federally chartered credit union,
10 Michigan state housing development authority, or a business
11 entity making or purchasing mortgage loans OR HOME IMPROVEMENT
12 LOANS, which has a main office, branch office, or service center
13 doing ~~such~~ business within ~~the~~ THIS state. ~~of Michigan.~~

14 (D) "DEPOSITORY INSTITUTION" MEANS A STATE OR NATIONALLY
15 CHARTERED BANK, A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
16 ASSOCIATION OR SAVINGS BANK, OR A STATE OR FEDERALLY CHARTERED
17 CREDIT UNION, WHICH HAS A MAIN OFFICE, BRANCH OFFICE, OR SERVICE
18 CENTER DOING BUSINESS WITHIN THIS STATE.

19 (E) ~~(d)~~ "Home improvement loan" means a loan secured or
20 unsecured to be used for the purpose of repairing, rehabilitat-
21 ing, or remodeling an existing residential dwelling designed for
22 occupancy by 4 or fewer families, as stated by the borrower in
23 the loan application and as recorded on the books of the credit
24 granting institution.

25 (F) ~~(e)~~ "Loan application" means a written application for
26 a mortgage loan or home improvement loan.

1 (G) ~~(f)~~ "Loan contract" means a contract for a mortgage
2 loan or home improvement loan.

3 (H) ~~(g)~~ "Mortgage loan" means a loan secured by a mortgage
4 on real property designed for occupancy by 4 or fewer families,
5 including individual units of condominiums and cooperatives, a
6 refinancing of an existing mortgage loan on real property
7 designed for occupancy by 4 or fewer families involving an
8 increase in the outstanding balance of the principal due, or a
9 loan secured by a junior lien on real property designed for occu-
10 pancy by 4 or fewer families undertaken for any purpose.

11 Mortgage loan does not include construction financing, purchase
12 of an interest in a pool of mortgage loans, or an extension of
13 the maturity of an existing mortgage loan not involving an
14 increase in the unpaid principal due.

15 (I) ~~(h)~~ "Neighborhood" means either of the following:

16 (i) A census tract as defined by the United States bureau of
17 the census in census of population, if located within a
18 ~~standard~~ metropolitan statistical area OR PRIMARY METROPOLITAN
19 STATISTICAL AREA as defined by the United States office of man-
20 agement and budget.

21 (ii) An area which is designated by a single zip code number
22 under the zoning improvement plan of the United States postal
23 service, if located outside a ~~standard~~ metropolitan statistical
24 area OR PRIMARY METROPOLITAN STATISTICAL AREA as defined by the
25 United States office of management and budget.

26 (J) "REAL ESTATE APPRAISER" MEANS AN INDIVIDUAL OR BUSINESS
27 ENTITY WHO APPRAISES RESIDENTIAL REAL PROPERTY OR AN INDIVIDUAL

1 OR BUSINESS ENTITY CONTRACTING WITH A CREDIT GRANTING INSTITUTION
2 TO APPRAISE RESIDENTIAL REAL PROPERTY OR AN EMPLOYEE OF A CREDIT
3 GRANTING INSTITUTION WHO APPRAISES 1 TO 4 FAMILY RESIDENTIAL REAL
4 PROPERTY.

5 Sec. 2. (1) A credit granting institution shall not deny a
6 loan application, or vary the interest rate, the term to maturi-
7 ty, the percentage required for a down payment, the application
8 and appraisal procedures, or other terms or conditions of a loan
9 contract:

10 (a) Due to racial or ethnic characteristics or trends in the
11 neighborhood in which the real estate is located.

12 (b) Except on the basis of written policies or criteria uni-
13 formly applied to all neighborhoods within a particular
14 ~~standard~~ metropolitan statistical area OR PRIMARY METROPOLITAN
15 STATISTICAL AREA or within the county in areas outside a
16 ~~standard~~ metropolitan statistical area OR PRIMARY METROPOLITAN
17 STATISTICAL AREA. A policy or criteria used by a credit granting
18 institution will be considered to be uniformly applied, even if a
19 credit granting institution grants exceptions to the policy or
20 criteria in favor of a loan applicant in not more than 5% of the
21 loan applications submitted to the credit granting institution.

22 (c) Due to the age of the structure on the real estate pro-
23 posed as security, or the age of other structures in the neigh-
24 borhood in which the real estate is located. This subdivision
25 ~~shall~~ DOES not preclude a credit granting institution OR REAL
26 ESTATE APPRAISER from considering the physical condition and

1 probable remaining useful life of the structure and all
2 structures within a radius of 750 feet.

3 (2) Each loan application shall be individually considered
4 on the basis of a factually supportable analysis of the lending
5 risks associated with the proposed loan.

6 (3) A credit granting institution shall not impose a minimum
7 mortgage amount greater than \$5,000.00. A credit granting insti-
8 tution shall not impose a minimum loan amount of greater than
9 \$500.00 for a home improvement loan.

10 (4) A credit granting institution shall not deny an individ-
11 ual an opportunity to submit a loan application. This act shall
12 not be construed to require a credit union to allow loan inquiry
13 or application by a person who is not a member or eligible to be
14 a member of the credit union.

15 (5) A person who makes a loan application for a mortgage
16 loan or home improvement loan which is denied or the terms of
17 which are varied and not accepted by the applicant shall receive
18 from the credit granting institution a written statement of the
19 reasons for the rejection or variation of terms. A credit grant-
20 ing institution that complies with the requirements of the equal
21 credit opportunity act, TITLE 7 OF PUBLIC LAW 90-321,
22 15 U.S.C. 1691 to 1691f, and the regulations promulgated under
23 that act, shall be considered to have complied with the require-
24 ments of this subsection.

25 (6) A credit granting institution, unless otherwise prohib-
26 ited by law, may charge an application fee uniform as to type of
27 loan applied for. If a credit granting institution includes

1 appraisal in its written statement of reasons for rejection or
2 variance or collects an application appraisal fee, then upon the
3 request of a person making a loan application which is denied or
4 the terms of which are varied and not accepted by the applicant,
5 a credit granting institution shall provide the person, without
6 additional charge, with a copy of the appraisal made in connec-
7 tion with the loan application. If an application appraisal fee
8 is not collected, the copy may be made usable only for purposes
9 related to this act. Copies of other completed forms, reports,
10 and correspondence, except a credit report or correspondence per-
11 taining to a credit report, used by the credit granting institu-
12 tion in reaching its decision shall be provided, on request, and
13 without charge, to a person making a loan application which is
14 denied or the terms of which are varied and not accepted by the
15 applicant. IF THE CREDIT GRANTING INSTITUTION OR REAL ESTATE
16 APPRAISER COLLECTS A FEE UPON APPLICATION AND CONDUCTS AN
17 APPRAISAL IN CONNECTION WITH THE APPLICATION, THE APPLICANT SHALL
18 BE PROVIDED WITH A COPY OF THE APPRAISAL.

19 (7) A credit granting institution shall not be liable to an
20 applicant or any other person for an error or omission in an
21 appraisal or other supporting documents made available to an
22 applicant, except if the error or omission is a violation of this
23 act.

24 (8) If a person makes a loan inquiry relating to the pros-
25 pects of obtaining a loan, the credit granting institution shall
26 respond to the inquiry and shall send or cause to be delivered to

1 the person making the inquiry a copy of the pamphlet or other
2 documents prepared pursuant to subsection (9).

3 (9) Each credit granting institution shall make available
4 for public distribution at the institution's principal office and
5 each branch office or service center a pamphlet or document
6 explaining in general terms the credit granting institution's
7 criteria for the approval or denial of a loan application. The
8 pamphlet or other document shall prominently state that any
9 person has the right to make a loan inquiry and to file a written
10 application for a mortgage loan or home improvement loan and to
11 receive a written response thereto. A credit granting institu-
12 tion may use a separate pamphlet or document for mortgage loans
13 and home improvement loans, and the pamphlet or document may con-
14 tain additional material as well as the material required by this
15 subsection. A copy of the pamphlet or other document currently
16 in use shall be filed with the commissioner.

17 (10) A REAL ESTATE APPRAISER SHALL NOT VARY THE APPRAISAL
18 PROCEDURE DUE TO THE REASONS SET FORTH IN SUBSECTION (1)(A) OR
19 (C).

20 Sec. 6. (1) Not more than 90 days after the end of ~~a~~
21 ~~credit granting institution's fiscal~~ THE CALENDAR year, a credit
22 granting institution which is required to file a disclosure
23 report pursuant to the federal home mortgage disclosure act of
24 1975, TITLE 3 OF PUBLIC LAW 94-200, 12 U.S.C. 2801 to ~~2809~~
25 2810, and the regulations promulgated under that act, shall file
26 a copy of that report with the commissioner.

1 (2) Not more than 90 days after the end of ~~a credit~~
2 ~~granting institution's fiscal~~ THE CALENDAR year, a credit
3 granting institution which is not required to file a disclosure
4 report pursuant to the federal home mortgage disclosure act OF
5 1975 shall prepare and file with the commissioner a report that
6 conforms in form and substance with the requirements of the fed-
7 eral home mortgage disclosure act.

8 (3) Not more than 90 days after the end of ~~a credit grant~~
9 ~~ing institution's fiscal~~ THE CALENDAR year, each credit granting
10 institution shall disclose by neighborhood for the previous
11 fiscal year the following:

12 (a) The average down payment as a percentage of the mortgage
13 loans, the average annual percentage rate of interest for the
14 mortgage loans, and the average term of the mortgage loans made
15 during the reporting period which are not guaranteed or insured
16 by the United States government or a department or agency of the
17 United States government and which:

18 (i) Are on real property where at the time of execution of
19 the particular mortgage the borrower intends to reside in the
20 property securing the mortgage loan, except multifamily
21 dwellings.

22 (ii) Are on multifamily dwellings, except if there would be
23 only 1 such mortgage reported.

24 (iii) Are on real property where at the time of execution of
25 the particular mortgage, the borrower did not have an intention
26 to reside in the property securing the mortgage, except
27 multifamily dwellings.

1 (b) The number and total dollar amount of home improvement
2 loans.

3 (4) Not more than 90 days after the end of ~~a credit grant-~~
4 ~~ing institution's fiscal~~ THE CALENDAR year, each credit granting
5 institution shall file with the commissioner, either as part of
6 the report required under subsection (1) or (2) or as an addi-
7 tional report in a form comparable to the disclosures under sub-
8 sections (1) and (2), a report which discloses by neighborhood
9 the number of loan applications denied and the reasons given for
10 such denial and a report which discloses by neighborhood the
11 number and total dollar amount of mortgage loans foreclosed.

12 (5) The reports filed with the commissioner pursuant to this
13 section ~~-6-~~ shall be available to the public for inspection at
14 the main office of the credit granting institution and at least 1
15 other branch office or service center of the institution, if any,
16 located within each ~~-standard-~~ metropolitan statistical area OR
17 PRIMARY METROPOLITAN STATISTICAL AREA in which the credit grant-
18 ing institution does business.

19 (6) A ~~credit granting~~ DEPOSITORY institution which has
20 total assets at the end of the ~~credit granting~~ DEPOSITORY
21 institution's last full ~~fiscal~~ CALENDAR year of \$10,000,000.00
22 or less and which is either regulated by the financial institu-
23 tions bureau or is a federally chartered ~~credit granting~~
24 DEPOSITORY institution is exempt from this section. A CREDIT
25 GRANTING INSTITUTION EXEMPT UNDER THIS SUBSECTION WHICH LATER
26 BECOMES SUBJECT TO THE DISCLOSURE PROVISIONS OF THIS SECTION

1 SHALL FILE ITS FIRST REPORT AT THE END OF THE FIRST FULL YEAR IN
2 WHICH IT BECAME SUBJECT TO THE DISCLOSURE PROVISIONS.

3 (7) An error in compiling or disclosing required mortgage
4 loan data shall not be considered a violation of this act if the
5 error was unintentional and resulted from a bona fide mistake
6 notwithstanding the maintenance of procedures reasonably adopted
7 to avoid error.

8 Sec. 9. (1) The commissioner shall encourage credit grant-
9 ing institutions to cooperate with local citizen's groups and
10 governing bodies of local units of government in the formation
11 and operation of voluntary mortgage review boards. The purpose
12 of voluntary local mortgage review boards shall be reviewing com-
13 plaints of rejected loan applicants, attempting to place loans
14 for rejected applicants, and any other purpose to which the per-
15 sons forming a mortgage review board may agree.

16 (2) The commissioner ~~shall be authorized to~~ MAY assist
17 loan applicants and credit granting institutions in the placement
18 of loans.

19 (3) ~~After July 1, 1979, in~~ IN a ~~standard~~ metropolitan
20 statistical area ~~in~~ OR PRIMARY METROPOLITAN STATISTICAL AREA
21 which the commissioner finds that voluntary mortgage review
22 boards are not functioning satisfactorily and in which the com-
23 missioner receives a substantial number of valid complaints or
24 the commissioner otherwise finds that this act is not being sub-
25 stantially complied with by more than 1 credit granting institu-
26 tion, the commissioner may establish a mandatory mortgage review
27 board or boards. Not more than 1 mandatory mortgage review board

1 shall be in each county in a ~~standard~~ metropolitan statistical
2 area OR PRIMARY METROPOLITAN STATISTICAL AREA. A mandatory mort-
3 gage review board may only review the complaints of rejected loan
4 applicants and attempt to place loans for rejected loan
5 applicants. Testimony given before and the findings of mandatory
6 mortgage review boards shall not be admissible in an administra-
7 tive hearing or court of law.

8 ~~(4) The commissioner's authority to establish mandatory~~
9 ~~mortgage review boards and the authority of those boards estab-~~
10 ~~lished by the commissioner will cease on January 1, 1983, unless~~
11 ~~extended by the legislature.~~

12 (4) ~~(5)~~ A mandatory mortgage review board established pur-
13 suant to subsection (3) shall consist of the commissioner or the
14 commissioner's representative and 8 members appointed by the gov-
15 ernor to serve for a term not to exceed 3 years. Not more than 4
16 of the members shall be of the same political party. The 8 mem-
17 bers shall be appointed as follows:

18 (a) Three members of the public who are from the area cov-
19 ered by the board and ~~who shall not be~~ ARE NOT connected with
20 credit granting institutions.

21 (b) Three representatives of credit granting institutions
22 who are recommended to the governor by credit granting institu-
23 tions which are active in making mortgage loans or home improve-
24 ment loans, or both, in the area covered by the board and who are
25 from the area covered by the board.

26 (c) An elected official of a local government within the
27 area covered by the board.

1 (d) An appraiser who is a member of a nationally recognized
2 organization of appraisers and who is from the area covered by
3 the board.

4 (5) ~~-(6)-~~ If a mortgage review board is unable to success-
5 fully place the loan for the rejected applicant, the board shall
6 notify the applicant in writing of the applicant's right to file
7 a complaint with the commissioner or other governmental agency,
8 or both, which has regulatory authority over the institution that
9 denied the loan.

10 (6) ~~-(7)-~~ Voluntary mortgage review boards shall not be
11 subject to THE FREEDOM OF INFORMATION ACT, Act No. 442 of the
12 Public Acts of 1976, being sections 15.231 to 15.246 of the
13 Michigan Compiled Laws, and THE OPEN MEETINGS ACT, Act No. 267 of
14 the Public Acts of 1976, being sections 15.261 to 15.275 of the
15 Michigan Compiled Laws.

16 (7) ~~-(8)-~~ Mandatory mortgage review boards shall be subject
17 to Act No. 442 of the Public Acts of 1976, and Act No. 267 of the
18 Public Acts of 1976.

19 (8) ~~-(9)- However, the~~ THE material furnished to the board
20 by the loan applicant or by the financial institution at the
21 applicant's request and other material relating to an applicant
22 shall be kept confidential. Before a financial institution may
23 release records and documents pertaining to the loan application
24 to the mortgage review board, the applicant shall sign a release
25 form. A financial institution ~~may~~ SHALL not release a credit
26 report.

1 (9) ~~(+10)~~ A mortgage review board shall maintain minutes
2 which ~~shall~~ reflect the number of cases appealed to the board,
3 the disposition of each case, the persons present at each pro-
4 ceeding, and if closed to the public, the party requesting the
5 closing.

6 (10) ~~(+11)~~ Meetings of mandatory mortgage review boards
7 shall be open to the public unless the rejected applicant or the
8 disapproving financial institution requests a closed session to
9 discuss material concerning the rejected application. In cases
10 of closed meetings only members of the mortgage review board, the
11 disapproving financial institution or the institution's represen-
12 tatives, or both, and the rejected applicant or the applicant's
13 representatives, or both, shall attend.

14 Sec. 11. (1) A person may commence an action in the circuit
15 court to seek an injunction ~~for a violation~~ or ~~to seek~~ dam-
16 ages for a violation of this act, or both. The commissioner may
17 join as a party plaintiff in an action. A person shall not be
18 entitled to damages under this act unless that person has made a
19 written loan application which has been denied or the terms of
20 which have been varied by the credit granting institution against
21 whom the action is filed. Class actions ~~shall not be~~ ARE NOT
22 permitted under this act.

23 (2) A person injured by a credit granting institution OR
24 REAL ESTATE APPRAISER in violation of this act ~~shall be~~ IS
25 entitled to ~~those~~ damages ~~as the court determines appropriate,~~
26 ~~but not to exceed~~ OF \$2,000.00 or actual damages plus reasonable

1 attorney's fees, whichever is greater, for each violation of this
2 act.