

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Reps. Richner, Bishop, Bisbee, Middaugh and Rivet

ENROLLED HOUSE BILL No. 6121

AN ACT 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:

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

Sec. 2. As used in this act:

(a) “Commissioner” means the commissioner of the office of financial and insurance services of the department of consumer and industry services.

(b) “Depository institution” means a bank, savings and loan association, savings bank, or a credit union chartered under state or federal law.

(c) “Home improvement installment contract” means an agreement of 1 or more documents covering the sale of goods or furnishing of services to a buyer for improvements to the buyer’s principal dwelling located in this state used for occupancy of 4 or fewer families under which the buyer promises to pay in installments all or any part of the price of the goods or services.

(d) “Mortgage loan” means a loan or home improvement installment contract secured by a first or subordinate mortgage or any other form of lien or a land contract covering real property located in this state used as the borrower’s principal dwelling and designed for occupancy by 4 or fewer families. Mortgage loan does not include any of the following:

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

(ii) Reverse-mortgage transactions.

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

(e) “Person” means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(f) “Reverse-mortgage” means a nonrecourse loan under which both of the following apply:

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

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

(g) “Regulated lender” means a depository institution or a licensee or a registrant under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, 1984 PA 379, MCL 493.101 to 493.114, the secondary mortgage

loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and a seller under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(h) "State and federal laws" means, individually and collectively, 1 or more of the laws or regulations of this state or the federal government which regulate or are applicable to a mortgage loan or a person when brokering, making, servicing, or collecting a mortgage loan, including, without limitation, the federal truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1649, and 1661 to 1667f, real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724, equal credit opportunity act, title VII of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1691 to 1691f, fair housing act, title VIII of the civil rights act of 1968, Public Law 90-284, 82 Stat. 81, fair credit report act, title VI of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1681 to 1681v, the homeowners protection act of 1998, Public Law 105-216, 112 Stat. 897, the fair debt collection practices act, title VIII of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601nt and 1692 to 1692o, consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, 1977 PA 135, MCL 445.1601 to 445.1614, and home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1422.

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

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

- (a) Charge a fee for a product or service if the product or service is not actually provided to the customer.
- (b) Misrepresent the amount charged by or paid to a third party for a product or service.

(2) A lender in making a mortgage loan shall not finance as part of the loan single premium coverage for any credit life, credit disability, or credit unemployment.

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

(4) A lender shall not insert or change information on an application for a mortgage loan if the lender knows that the information is false and misleading and intended to deceive a third party that the borrower is qualified for the loan when in fact the third party would not approve the loan without the insertion or change.

(5) A statement or representation is deceptive or misleading if it has the capacity to deceive or mislead a borrower or potential borrower. The commissioner shall consider any of the following factors in deciding whether a statement or misrepresentation is deceptive or misleading:

- (a) The overall impression that the statement or representation reasonably creates.
- (b) The particular type of audience to which the statement is directed.
- (c) Whether it may be reasonably comprehended by the segment of the public to which the statement is directed.

(6) A lender shall not condition the payment of an appraisal upon a predetermined value or the closing of the mortgage loan which is the basis of the appraisal.

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

(8) A mortgage loan note shall not contain blanks regarding payments, interest rates, maturity date, or amount borrowed to be filled in after the note is signed by the borrower.

Sec. 5. A mortgage loan with a term of less than 5 years shall not have a payment schedule with regular periodic payments that when aggregated do not fully amortize the outstanding principal balance. This section does not apply to loans with maturities of less than 1 year, if the purpose of the loan is a "bridge" loan connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

Sec. 6. At the time a person applies for a mortgage loan, the lender shall provide the applicant the following document:

"BORROWERS BILL OF RIGHTS

1. You have the RIGHT to shop for the best loan for you and compare the charges of different mortgage brokers and lenders.
2. You have the RIGHT to be informed about the total cost of your loan including the interest rate, points, and other fees.

3. You have the RIGHT to obtain a “Good Faith Estimate” of all loan and settlement charges before you agree to the loan or pay any fees.
4. You have the RIGHT to know what fees are nonrefundable if you decide to withdraw your loan application.
5. You have the RIGHT to ask your mortgage broker to explain exactly what the mortgage broker will do for you.
6. You have the RIGHT to know how much the mortgage broker is getting paid by you and the lender for your loan.
7. You have the RIGHT to ask questions about charges and loan terms that you do not understand.
8. You have the RIGHT to a credit decision that is not based on your race, color, religion, national origin, sex, marital status, age, or whether any income is derived from public assistance.
9. You have the RIGHT to know the reason if your loan application is turned down.
10. You have the RIGHT to receive the HUD settlement costs booklet “Buying Your Home”.

Sec. 7. At the time a person applies for a mortgage loan, the lender shall provide the applicant the following written notice regarding the value of receiving credit counseling before taking out a mortgage loan and a list of the nearest available HUD-approved credit counseling agencies:

“CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and all money you have invested in it, if you do not meet your obligations under the loan, including making all your payments.

Mortgage loans rates and closing costs and fees vary based on many factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be applicable depending on the individual circumstances of a particular consumer’s application.

You should shop around and compare loan rates and fees. This particular loan may have a higher rate and total points and fees than other mortgage loans. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development’s counseling hotline at 1-888-466-3487 for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application. If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts.

Property taxes and homeowner’s insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.”

Sec. 8. The commissioner may conduct examinations and investigations of a person over whom the commissioner has regulatory authority as necessary to determine whether the person is brokering, making, servicing, or collecting mortgage loans as required by this act.

Sec. 9. If the commissioner determines that a person is brokering, making, servicing, or collecting mortgage loans in violation of this act, the commissioner shall do 1 or more of the following:

- (a) Initiate a cause of action under section 10.
- (b) If the person is chartered, licensed, registered, regulated, or administered by the commissioner under a law of this state, the commissioner shall enforce the penalties and remedies under that law.
- (c) Forward a complaint to the appropriate regulatory or investigatory authority.

Sec. 10. The attorney general or the prosecuting attorney for the county where an alleged violation occurred may bring an action against a person to do 1 or more of the following:

- (a) Obtain a declaratory judgment that a method, act, or practice of the person is a violation of this act.
- (b) Enjoin a person who is engaging or about to engage in a method, act, or practice that is a violation of this act.

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

Sec. 11. (1) A person is not liable for a violation under section 10 if the person shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a 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 a bona fide error.

(2) A person is not liable for a violation under section 10 if, within 60 days after discovery of the violation and before the institution of an action under section 10, the person notifies the borrower or buyer of the violation and corrects the violation in a manner that, to the extent it is reasonably possible to do so, restores the borrower or buyer to the position in which the borrower or buyer would have been if the violation had not occurred.

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

Sec. 12. This act does not limit the authority of the commissioner, the attorney general, or a county prosecutor to enforce any law under which a person is chartered, organized, licensed, registered, regulated, or otherwise authorized to do business in this state.

Sec. 13. (1) No later than December 31, 2003, the office of financial and insurance services shall develop and make available to local units of government, financial institutions, and other interested persons 1 or more model programs for financial education.

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

Sec. 14. (1) The federal government and state solely regulate the business of brokering, making, servicing, and collecting mortgage loans in this state and the manner in which any such business is conducted.

(2) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to regulate, directly or indirectly, the brokering, making, servicing, or collecting of mortgage loans constitutes a statutory conflict with the uniform operation throughout the state of residential mortgage lending and is preempted.

(3) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state to collect information about, require reporting of, pledges regarding, notices, or certifications concerning loans, lenders, applicants, deposits, or credit experiences, character, and criminal background checks of employees, agents, customers, or other persons is preempted by this act.

(4) Any charter, ordinance, resolution, regulation, rule, or other action by a municipal corporation or other political subdivision of this state that attempts to regulate the brokering, making, servicing, or collecting of mortgage loans constitutes a statutory conflict and is preempted, including, without limitation, if the ordinance, resolution, regulation, or other action does either of the following:

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

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

(5) If any provision of this section, or any application of any provision of this section, is for any reason held to be illegal or invalid, the illegality or invalidity shall not affect any legal and valid provision or application of this section, and the provisions and applications of this section shall be severable.

Sec. 15. (1) The laws of this state relating to the brokering, making, servicing, and collecting of mortgage loans prescribe rules of conduct upon citizens generally, comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions, and constitute general laws of this state.

(2) Silence in the statutes of this state with respect to any act or practice in the brokering, making, servicing, or collecting of mortgage loans shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of brokering, making, servicing, or collecting of mortgage loans.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved

Governor.