

# SENATE BILL No. 483

September 11, 1991, Introduced by Senator ARTHURHULTZ and referred to the Committee on Appropriations.

A bill to amend sections 4, 8, 14, 26, and 27 of Act No. 125 of the Public Acts of 1981, entitled as amended

"An act to define and regulate secondary mortgage loans and other unsecured 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,"

section 14 as amended by Act No. 444 of the Public Acts of 1988, being sections 493.54, 493.58, 493.64, 493.76, and 493.77 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 4, 8, 14, 26, and 27 of Act No. 125 of  
2 the Public Acts of 1981, section 14 as amended by Act No. 444 of  
3 the Public Acts of 1988, being sections 493.54, 493.58, 493.64,  
4 493.76, and 493.77 of the Michigan Compiled Laws, are amended to  
5 read as follows:

1        Sec. 4. At the time of making an application, the applicant  
2 shall pay to the commissioner ~~-\$150.00 as~~ a fee for investigat-  
3 ing the applicant ~~—~~ and, at the time of application and annu-  
4 ally thereafter, ~~-\$300.00 as~~ an annual license fee AS PROVIDED  
5 BY SECTION 14.

6        Sec. 8. (1) A license shall specify the location of the  
7 office or branch and shall be conspicuously displayed in the  
8 office or branch. ~~If the location is changed, the commissioner~~  
9 ~~shall indorse the change on the license without charge.~~

10        (2) The license is not transferable or assignable.

11        (3) A licensee shall not transact business under another  
12 name or maintain an office at a location other than that desig-  
13 nated in the license.

14        Sec. 14. (1) The commissioner shall examine the books,  
15 accounts, records, and files of a licensee not less than  
16 annually. The commissioner may, at any time, make necessary  
17 investigations and examine the books, accounts, records, and  
18 files of the licensee. This section shall not be construed to  
19 prohibit the keeping of records by electronic data processing  
20 methods. A licensee shall pay an examination fee for examination  
21 of its records conducted by the commissioner. ~~Annually the com-~~  
22 ~~missioner shall determine the amount of the examination fee that~~  
23 ~~shall be charged for all examinations conducted during the calen-~~  
24 ~~dar year. The rate shall be not less than \$15.00 per hour, nor~~  
25 ~~more than \$30.00 per hour for each examiner engaged in an~~  
26 ~~examination.~~ The examination fee shall be invoiced upon the  
27 completion of the examination and ~~shall be~~ IS due and payable

1 upon receipt of the invoice by the licensee. A licensee ~~shall~~  
2 IS not ~~be~~ required to pay more than 1 examination fee in a cal-  
3 endar year.

4 (2) THE COMMISSIONER SHALL ANNUALLY ESTABLISH THE SCHEDULE  
5 OF FEES SUFFICIENT TO PAY THE BUREAU'S COSTS OF ADMINISTERING  
6 THIS ACT. THE FEES ARE AS FOLLOWS:

7 (A) FOR THE INVESTIGATION OF AN APPLICANT FOR A LICENSE, NOT  
8 LESS THAN \$200.00 OR MORE THAN \$600.00.

9 (B) FOR THE ISSUANCE OR ANNUAL RENEWAL OF A LICENSE, NOT  
10 LESS THAN \$300.00 OR MORE THAN \$800.00.

11 (C) FOR AMENDING A LICENSE, NOT LESS THAN \$20.00 OR MORE  
12 THAN \$75.00.

13 (D) FOR EXAMINATION OF THE LICENSEE, NOT LESS THAN \$40.00 OR  
14 MORE THAN \$70.00 PER HOUR FOR EACH EXAMINER INVOLVED IN AN  
15 EXAMINATION. IN ADDITION, A LICENSEE SHALL PAY THE ACTUAL TRAVEL  
16 AND LODGING EXPENSES INCURRED BY BUREAU EMPLOYEES WHO TRAVEL OUT  
17 OF STATE TO EXAMINE RECORDS OF THE LICENSEE.

18 (3) ~~-(2)- All fees and expenses provided for in this sec-~~  
19 ~~tion and section 4~~ MONEY RECEIVED PURSUANT TO THIS ACT shall be  
20 paid into the state treasury to the credit of the financial  
21 institutions bureau ~~operations fund, which is hereby established~~  
22 ~~by this section. The money in the operations fund shall be~~ AND  
23 used only to fund the operations of the financial institutions  
24 bureau.

25 (4) IF ANY FEES OR PENALTIES PROVIDED FOR IN THIS ACT ARE  
26 NOT PAID WHEN REQUIRED, THE ATTORNEY GENERAL MAY MAINTAIN AN

1 ACTION AGAINST THE DELINQUENT LICENSEE FOR THE RECOVERY OF THE  
2 FEES OR PENALTIES TOGETHER WITH INTEREST AND COSTS.

3 (5) FEES RECEIVED PURSUANT TO THIS ACT ARE NOT REFUNDABLE.

4 (6) A LICENSE RENEWAL FEE THAT IS NOT PAID ON OR BEFORE  
5 DECEMBER 31 IS SUBJECT TO A PENALTY OF \$25.00 FOR EACH DAY THE  
6 FEE IS DELINQUENT OR \$1,000.00, WHICHEVER IS LESS.

7 Sec. 26. (1) A person shall not cause to be placed before  
8 the public of this state, directly or indirectly, false, mislead-  
9 ing, deceptive, or irresponsible advertising pertaining to sec-  
10 ondary mortgage loans or the availability of secondary mortgage  
11 loans. False, misleading, deceptive, or irresponsible advertis-  
12 ing includes, but is not limited to:

13 (a) Advertising ~~which~~ THAT lures, entices, induces, or  
14 tends to induce a person to incur a debt by unreasonably minimiz-  
15 ing the consequences of assuming a legal repayment obligation or  
16 by depicting the assumption of a debt obligation as a frivolous  
17 transaction.

18 (b) Advertising that describes or depicts the benefits or  
19 advantages of having the money from a loan, without describing or  
20 depicting the obligation of repaying the loan with interest.

21 (c) Advertising with claims and representations that are not  
22 accurate or provable.

23 (d) Advertising ~~which~~ THAT misrepresents facts or creates  
24 misleading impressions.

25 (e) Advertising ~~which~~ THAT contains a statement ~~which~~  
26 THAT, though true, implies an untruth.

1 (f) Advertising ~~which~~ THAT uses the phrase "lowest rates",  
2 "lowest rates in the city", or similar phrases unless the rates  
3 are actually lower than those of other lenders.

4 (g) Advertising ~~which~~ THAT uses the phrase "new reduced  
5 rates", "new low rates", "reduced rates", or similar phrases for  
6 more than 60 days after the changed rates become effective.

7 (h) Advertising ~~which~~ THAT causes a probability of confu-  
8 sion or misunderstanding as to the legal rights, obligations, or  
9 remedies of a lender, or as to the terms or conditions of  
10 credit.

11 (i) Advertising ~~which~~ THAT represents that a borrower will  
12 receive a rebate, discount, or other benefit as an inducement for  
13 entering into a transaction — if the benefit is contingent on  
14 an event to occur subsequent to the consummation of the  
15 transaction.

16 (j) Advertising ~~which~~ THAT suggests or infers that a loan  
17 is not a loan, ~~or~~ that interest is not charged, or that the  
18 borrower is not under an obligation to repay.

19 (k) This section does not apply to an owner, publisher,  
20 operator, or employee of a publication or radio or television  
21 station ~~which~~ THAT disseminates the advertising matter without  
22 knowledge of its false or misleading character.

23 (2) A licensee shall not advertise any size of loan, secur-  
24 ity required for a loan, rate of charge, or other condition of  
25 lending except with the full intent of making loans at those  
26 rates, or lower rates, and under those conditions, to applicants  
27 who meet the standards or qualifications prescribed.

1           (3) A person who violates this section or directly or  
2 indirectly counsels, aids, or abets a violation is liable, in  
3 addition to other penalties and forfeitures imposed by this act,  
4 for a civil fine of not more than \$1,000.00 for each offense.  
5 The civil fine shall be sued for and recovered by and in the name  
6 of the commissioner and shall be collected and enforced by sum-  
7 mary proceedings by the attorney general. ~~The money collected~~  
8 ~~for a civil fine under this section shall be paid into the gen-~~  
9 ~~eral fund of this state.~~

10           Sec. 27. (1) A violation of this act with respect to a par-  
11 ticular secondary mortgage transaction ~~—~~ shall result in the  
12 forfeiture of all interest otherwise owing under the terms of the  
13 secondary mortgage loan.

14           (2) A person, association, nonprofit corporation, common law  
15 trust, joint stock company, or any other group of individuals,  
16 however organized, or any owner, partner, member, officer, direc-  
17 tor, trustee, employee, agent, broker, or representative thereof  
18 who or which ~~wilfully~~ WILLFULLY or intentionally engages in  
19 this state in the business of making secondary mortgage loans as  
20 defined in this act without a license, as required under this  
21 act, is guilty of a misdemeanor ~~—~~ and upon conviction shall be  
22 fined not more than \$5,000.00, or imprisoned for not more than 3  
23 years, or both, at the discretion of the court.

24           (3) A person who violates this act or directly or indirectly  
25 counsels, aids, or abets a violation is liable, in addition to  
26 other penalties and forfeitures imposed by this act, for a civil  
27 fine of not more than \$1,000.00 for each offense. The civil fine

1 shall be sued for and recovered by and in the name of the  
2 commissioner and shall be collected and enforced by summary pro-  
3 ceedings by the attorney general. ~~The money collected for a~~  
4 ~~civil fine under this section shall be paid into the general fund~~  
5 ~~of this state.~~

6 (4) Whether or not he or she seeks damages or has an ade-  
7 quate remedy at law, a person, a county prosecutor, or the attor-  
8 ney general may bring an action to:

9 (a) Obtain a declaratory judgment that a method, act, or  
10 practice is a violation of this act.

11 (b) Enjoin in accordance with the principal of equity a  
12 person who is engaging or is about to engage in a method, act, or  
13 practice ~~which~~ THAT violates this act.

14 (c) Recover actual damages resulting from a violation of  
15 this act ~~—~~ or \$250.00, whichever is greater, together with rea-  
16 sonable attorneys' fees and the costs of bringing the action.