



# SENATE BILL No. 441

March 28, 1995, Introduced by Senator BOUCHARD and referred to the Committee on Financial Services.

A bill to amend sections 1, 13, 18, and 19 of Act No. 21 of the Public Acts of 1939, entitled as amended "Regulatory loan act of 1963," section 13 as amended by Act No. 142 of the Public Acts of 1994 and sections 1 and 19 as amended by Act No. 14 of the Public Acts of 1991, being sections 493.1, 493.13, 493.18, and 493.19 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 1, 13, 18, and 19 of Act No. 21 of the  
2 Public Acts of 1939, section 13 as amended by Act No. 142 of the  
3 Public Acts of 1994 and sections 1 and 19 as amended by Act  
4 No. 14 of the Public Acts of 1991, being sections 493.1, 493.13,  
5 493.18, and 493.19 of the Michigan Compiled Laws, are amended to  
6 read as follows:

1       Sec. 1. (1) A person shall not engage in the business of  
2 making loans of money, credit, goods, or things in action in an  
3 amount or of a value included within the regulatory loan ceiling  
4 and charge, contract for, or receive on the loan a greater rate  
5 of interest, discount, or consideration than the lender would be  
6 permitted by law to charge if the lender were not a licensee  
7 UNDER THIS ACT except as authorized by this act and without first  
8 obtaining a license from the commissioner for each location at  
9 which the business is to be conducted under this act, or by  
10 obtaining a license under the consumer financial services act,  
11 Act No. 161 of the Public Acts of 1988, being sections 487.2051  
12 to 487.2072 of the Michigan Compiled Laws.

13       (2) As used in this act:

14       (a) "Person" ~~includes individuals, partnerships, associa-~~  
15 ~~tions, and corporations unless the context requires a different~~  
16 ~~meaning~~ MEANS AN INDIVIDUAL, PARTNERSHIP, ASSOCIATION, CORPORA-  
17 TION, OR ANY OTHER LEGAL ENTITY.

18       (b) "Licensee" means a person ~~, partnership, association,~~  
19 ~~or corporation to whom or which 1 or more licenses have been~~  
20 ~~issued~~ LICENSED UNDER THIS ACT.

21       (c) "License" means a single license issued ~~with respect~~  
22 to a single place of business.

23       (d) "Liquid assets" means cash, unrestricted deposits in  
24 banks, and readily marketable securities at their then market  
25 value.

26       (e) "Assets" means ~~cash, unrestricted deposits in banks,~~  
27 ~~readily marketable securities at their then market value~~ LIQUID

1 ASSETS, collectible loans made in accordance with this act, and  
2 personal property acquired in the general conduct of business  
3 transacted under this act.

4 (f) "Regulatory loan ceiling" means ~~\$8,000.00~~ \$15,000.00.

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

7 (h) "Advertising" means publishing or broadcasting, or caus-  
8 ing to be published or broadcast, material ~~which~~ THAT has been  
9 prepared for public distribution by means of newspapers, maga-  
10 zines, or electronic media. Advertising does not include a  
11 stockholder communication, such as an annual report, interim  
12 financial report, registration statement, security, prospectus,  
13 application for listing a security on a stock exchange, or proxy  
14 materials, nor does it include a communication addressed to a  
15 person who has previously executed a loan agreement relative to  
16 that person's account.

17 Sec. 13. (1) A licensee may lend money in an amount not to  
18 exceed the regulatory loan ceiling and may contract for, compute,  
19 and receive interest charges on the loan at a rate ~~not to exceed~~  
20 ~~22% per annum on the unpaid balance. The rate for a loan that is~~  
21 ~~made for the purchase of a motor vehicle shall~~ THAT DOES not  
22 exceed the rate ~~provided for that class of vehicle in section 18~~  
23 ~~of the motor vehicle sales finance act, Act No. 27 of the Public~~  
24 ~~Acts of the Extra Session of 1950, being section 492.118 of the~~  
25 ~~Michigan Compiled Laws~~ PERMITTED BY THE CREDIT REFORM ACT. A  
26 loan by a licensee may be 1 of the following:

1 (a) A closed-end loan.

2 (b) Open-end credit ~~in which access to the credit is by~~  
3 ~~means of~~ CONSISTING OF DIRECT advances ~~directly~~ from the  
4 licensee or ~~access~~ checks issued by the licensee. This subdi-  
5 vision does not apply to open-end credit ~~accessed by means~~  
6 AVAILABLE THROUGH THE USE of a credit CARD or charge card.

7 (2) A licensee shall not induce or permit a person to become  
8 directly obligated under more than 1 loan contract at the same  
9 time.

10 (3) Charges on loans made under this act shall not be paid,  
11 deducted, or received in advance, or compounded. All charges on  
12 loans made under this act shall be computed on the unpaid princi-  
13 pal balance or portions of the balance, specifically expressed in  
14 every obligation signed by the borrower, and computed on the  
15 basis of the number of days actually elapsed.

16 (4) In addition to the interest and charges provided for in  
17 this act, a loan processing fee not to exceed 2% of the princi-  
18 pal, up to \$40.00, may be charged for each closed-end loan made,  
19 and may be included in the principal of the loan. A LICENSEE MAY  
20 REQUIRE THE BORROWER TO PAY THE LATE CHARGES PERMITTED BY THE  
21 CREDIT REFORM ACT. A licensee shall not induce or permit a person  
22 to become obligated, directly or contingently, under more than 1  
23 loan contract at the same time for the purpose or with the result  
24 of obtaining a loan processing fee not otherwise permitted by  
25 this section. No other amount shall be directly or indirectly  
26 charged, contracted for, or received, except the lawful fees, if  
27 any, actually and necessarily paid ~~out~~ by the licensee to a

1 ~~public officer for~~ GOVERNMENTAL ENTITY FOR THE filing,  
2 recording, or releasing ~~in a public office a~~ OF EITHER OF THE  
3 FOLLOWING:

4 (A) A financing statement  ~~/~~ OR an instrument securing the  
5 loan, or both.  ~~, and for noting and releasing~~

6 (B) A RECORD NOTING OR RELEASING a lien or transferring a  
7 certificate of title under the Michigan vehicle code, Act No. 300  
8 of the Public Acts of 1949,  ~~as amended,~~ being sections 257.1 to  
9 257.923 of the Michigan Compiled Laws.

10 (5) The fees permitted under this section may be collected  
11 at any time on or after the date the loan is made.

12 ~~(5) A licensee shall not receive a loan processing fee for~~  
13 ~~either of the following:~~

14 ~~(a) A loan contract that is renegotiated, renewed, or~~  
15 ~~modified.~~

16 ~~(b) A loan contract that is issued to obligate a person to~~  
17 ~~repay a sum of money that was previously lent to a person through~~  
18 ~~a prior loan contract by the licensee.~~

19 (6) A LICENSEE MAY CHARGE A handling fee of \$5.00  ~~may be~~  
20 ~~charged by the licensee~~ for the return of an unpaid and dishon-  
21 ored check, draft, negotiable order, or similar instrument given  
22 to the licensee in full or partial repayment of a loan.

23 ~~(7) A licensee may require the borrower to pay a fee for a~~  
24 ~~late payment if the fee does not exceed the greater of \$5.00 or~~  
25 ~~5% of the minimum payment due that is received by the licensee 10~~  
26 ~~or more days after the due date.~~

1 (7) ~~(8)~~ A licensee may charge a reasonable annual fee for  
2 the privilege of receiving open-end credit from the licensee.

3 (8) ~~(9)~~ If an amount other than ~~or in excess of~~ the  
4 charges permitted by this act is charged, contracted for, or  
5 received ~~—~~ FOR ANY REASON other than ~~by~~ a bona fide clerical  
6 error, the LOAN contract ~~of loan~~ shall be void and the licensee  
7 shall not ~~have a right to~~ collect or receive any principal,  
8 charges, or recompense whatsoever.

9 (9) ~~(10)~~ As used in this section, "open-end credit" means  
10 credit that is not secured by an interest in real property and is  
11 extended under a plan in which both of the following apply:

12 (a) The licensee reasonably contemplates repeated  
13 transactions.

14 (b) The amount of credit that may be extended to the bor-  
15 rower during the term of the plan is generally made available to  
16 the extent that any part of the outstanding balance is repaid.

17 Sec. 18. (1) A person, except as authorized by this act,  
18 shall not directly or indirectly charge, contract for, or receive  
19 an interest, discount, or consideration greater than the lender  
20 would be permitted by law to charge if the lender were not  
21 licensed under this act upon the loan, use, or forbearance of  
22 money, goods, or things in action, or upon the loan, use, or sale  
23 of credit of the amount or value included within the regulatory  
24 loan ceiling.

25 (2) The prohibition specified in subsection (1) ~~shall~~  
26 ~~apply~~ APPLIES to a person who or which, by any device,  
27 subterfuge, or pretense ~~whatsoever shall charge, contract for,~~

1 ~~or receive~~ CHARGES, CONTRACTS FOR, OR RECEIVES greater interest,  
2 consideration, or charges than authorized by this act for the  
3 loan, use, or forbearance of money, goods, or things in action or  
4 for the loan, use, or sale of credit.

5 (3) ~~A loan of the amount or value included within the regu-~~  
6 ~~latory loan ceiling for which a greater rate of interest, consid-~~  
7 ~~eration, or charges than is permitted by this act has been~~  
8 ~~charged, contracted for, or received, wherever made, shall not be~~  
9 ~~enforced in this state. A person who participates in such a loan~~  
10 ~~in this state shall be subject to this act. However, this~~  
11 ~~restriction shall~~ THIS ACT DOES not apply to loans legally made  
12 in ~~a~~ ANOTHER state or country by a licensee under ~~an existing~~  
13 A regulatory loan law similar in principle to this act, except  
14 that loans made by mail to Michigan residents ~~shall be~~ ARE  
15 subject to this act.

16 Sec. 19. (1) A person, ~~and the several members, officers,~~  
17 ~~directors, agents, and employees thereof,~~ INCLUDING A MEMBER,  
18 OFFICER, DIRECTOR, AGENT, OR EMPLOYEE OF A LICENSEE, who  
19 ~~violate~~ VIOLATES or ~~participate~~ PARTICIPATES in the violation  
20 of section 1, 12, 13, 14, or 18 ~~are~~ IS guilty of a misdemeanor  
21 ~~—~~ punishable by a fine of not more than \$500.00, or imprison-  
22 ment for not more than 6 months, or both.

23 (2) A person who ~~enters into any contract of loan not~~  
24 ~~invalid for any other reason, in the making or collection of~~  
25 ~~which an act is done that constitutes~~ MAKES OR COLLECTS UPON A  
26 LOAN CONTRACT IN A MANNER PROHIBITED BY THIS ACT IS GUILTY OF a  
27 misdemeanor under this section ~~—, except as a result of~~

1 ~~accidental, bona fide, or judicially determined justifiable~~  
2 ~~error, shall be barred from recovery of interest or principal. A~~  
3 ~~court may provide for recovery of the principal if the court~~  
4 ~~finds that the violation occurred as a result of good faith reli-~~  
5 ~~ance on documented advice of government regulators or the attor-~~  
6 ~~ney general.~~ AND IS SUBJECT TO THE CREDIT REFORM ACT.

7       Section 2. This amendatory act shall not take effect unless  
8 Senate Bill No. 438  
9                   of the 88th Legislature is enacted into law.