



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

REGULATE CREDIT CARD BROKERING

House Bill 4353

RECEIVED

Sponsor: Rep. Gary L. Randall
Committee: Corporations and Finance
Complete to 3-30-89

MAY 23 1989

Mich. State Law Library

***A SUMMARY OF HOUSE BILL 4353 AS
INTRODUCED 3-7-89***

The bill would provide for the regulation of persons engaged in credit card brokering, and specifies that a person could not engage in this activity without first obtaining a license from the banking commissioner. The bill would not apply to a foreign bank agency or to a federally-insured state or national bank, trust company, state or federal credit union, savings and loan or stock/mutual savings bank whose principal office was located in the state.

License Application Procedures, Fees. An application for a credit card brokering license would be made in writing and under oath, accompanied by a nonrefundable \$500 investigation fee, to the banking commissioner (of the Financial Institutions Bureau in the Department of Commerce) in a form prescribed by the commissioner. The application would state the full name and business address of the following:

- the proprietor, if the applicant was an individual;
- every member, if the applicant was a partnership or association (except for when the applicant was a joint stock association with 50 or more members, in which case the names and business addresses of the association and its officers and directors would be required); and
- if applying as a corporation, the corporation and each of its officers/directors.

Financial Records, Bonding. A license application would have to include the following:

- financial statements, reasonably satisfactory to the commissioner, which showed the applicant's net worth exceeded \$100,000; and
- a surety bond issued by a bonding or insurance company authorized to do business in the state, or an irrevocable letter of credit, in the principal sum — for the first year of doing business — of \$250,000. For each subsequent year the principal sum required would be the average monthly dollar volume done by the licensee during the preceding year. The bond or letter of credit would be in a form satisfactory to the commissioner and would run to the commissioner for the benefit of creditors or claimants against the applicant or its agents, to secure the faithful performance of the applicant's obligations relative to the receipt of money as it pertains to credit card brokering. The surety's aggregate liability could not exceed the bond's principal sum.

Commissioner Responsibility To Investigate. Upon filing of the application, payment of the investigation fee, and commissioner-approval of the bond/letter of credit, the commissioner would investigate the financial responsibility, business experience, character and general fitness of the person, and, if he or she deemed it advisable, the general fitness of the person's officers and directors. If the commissioner found the applicant's qualities met the

requirements of the act and was reasonably assured the applicant's business would be conducted honestly, fairly, equitably, carefully, efficiently, and in manner commanding the confidence and trust of the community, the commissioner would have to issue the applicant a license.

A license could not be denied, suspended, or revoked without notifying the applicant or licensee in writing, at least 10 days prior to the action, the reasons for the denial, suspension, or revocation. Within five days after receipt of the notice, the applicant or licensee could make a written demand for a hearing. With "reasonable promptness" the commissioner would hear and determine the matter pursuant to the Administrative Procedures Act. If the applicant or licensee was aggrieved by the order, he or she could appeal within 30 days from the date of the order to the Ingham County Circuit Court and would be entitled to an appropriate judicial review. If an order revoking a license was appealed, the court could stay the order, pending the appeal's final outcome.

The commissioner could make investigations and conduct hearings as he or she deemed necessary to determine whether a licensee or any other person had violated the provisions of the bill, or if a licensee had conducted business in a way justifying the suspension or revocation of its license. The commissioner could subpoena witnesses and documents, papers, books, records, and other evidence in a matter under his or her jurisdiction, control, or supervision, and could administer oaths and affirmations to a person whose testimony was required. If a person failed to comply with a subpoena or to testify with respect to any matter for which the person could be questioned lawfully, the Ingham County Circuit Court, on application by the commissioner, could issue an order requiring the person to attend, give testimony or produce evidence.

The commissioner would promulgate rules necessary for the enforcement of the bill as required under the Administrative Procedures Act.

Spot Investigations. The commissioner could investigate at any time the business of a licensee, examine the books, accounts, records, and files used and maintained by a licensee, and require him or her to furnish additional reports related to the licensee's business. The commissioner could accept a certified public accountant's annual report and audit of the licensee's affairs instead of the examination provided under the bill.

Cease and Desist Orders. If the commissioner believed a person or licensee had engaged in an unsafe or unsound credit card brokering practice to the detriment of consumers, or had reason to believe a licensee had violated or failed to comply with the bill or a rule promulgated under the bill, the commissioner could notify the person in writing of the charges against him or her. The notice would contain a statement of the facts constituting the alleged

H.B. 4353 (3-30-89)

unsafe or unsound practice, violation, or failure and would set a time and place for a hearing to determine whether an order to cease and desist from the activity (or lack of activity) was appropriate. The hearing would have to be five to 10 days after service of the notice, unless an earlier or later date was set by commissioner at the request of the alleged violator. Unless the person or licensee appeared at the hearing personally or by an authorized representative, he or she would be considered to have consented to the issuance of the cease and desist order. If there were consent, or if upon the record made at the hearing the commissioner found an unsafe or unsound practice or other violation of the bill, he or she could issue an order upon the person to cease and desist from any practice, violation, or failure to comply. The commissioner could also require or recommend the person or licensee take affirmative action to correct conditions resulting from his or her violation of the bill. The order would become effective five days after it had been served upon the licensee, except for an order issued with the person's consent, which would take effect at the time specified in the order. The order would remain in effect and be enforceable as specified in the order, depending on whether it was stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

Licensee Responsibility. A licensee's license would not be transferable and the licensee would be responsible for the following:

- to act in a fiduciary capacity in the performance of activities relative to the bill;
- to not commingle the funds of the beneficiary of his or her fiduciary duty with the licensee's, or any other person's, funds;
- to pay to the commissioner within five days after the issuance of the license, and annually thereafter on or before March 1 of each year, a \$500 license fee; and
- on or before March 1 of each year, to file with the commissioner a list of the locations of the licensee's offices and the names and locations of the agents authorized by the licensee.

Fees, Penalties. All fees and expenses provided in the bill would be paid into the state treasury and credited to the Financial Institutions Bureau, to be used solely for the bureau's operation.

A person who violated the bill's provisions concerning licensure, the fiduciary capacity of licensees, or the mixing of beneficiary funds with those of the licensee would be guilty of a felony, and could be punished by imprisonment for up to five years or a fine of \$5,000 to \$10,000, or both. Violations of other parts of the bill would constitute a misdemeanor, and could be punishable by imprisonment for up to 90 days or a fine of \$100 to \$500, or both. Each transaction in violation of the bill, and each day a violation continued, would be counted a separate offense.