



**House
Legislative
Analysis
Section**

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

REQUIRE CREDITORS TO NOTIFY COSIGNERS

House Bill 4354 (Substitute H-1)
First Analysis (7-25-89)

Sponsor: Rep. Alma Stallworth
Committee: Consumers

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THE APPARENT PROBLEM:

Often a person who has acted as a cosigner on an obligation is not aware that the primary signer has missed payments or defaulted until he or she is contacted by a collection agency or reported to a credit bureau as having a bad debt. Some say that tarnished credit ratings and heavy legal expenses occur because the law fails to provide for the notification of cosigners when a primary signer has become delinquent or has defaulted on an obligation prior to the release of adverse information to consumer reporting or collection agencies.

THE CONTENT OF THE BILL:

The bill would create an act to require creditors to notify a cosigner before informing a credit agency that the cosigner had not complied with the contractual provisions of an obligation. Under the bill, a "cosigner" would be defined as a natural person who rendered himself or herself liable for the obligation of another person without compensation (a person who did not receive goods, services or money in return for a credit obligation would be defined under the bill as "not receiving compensation;" a "natural person," under the federal law that regulates collection activities, means an individual and not a corporation or partnership). The term would include one whose signature had been requested as a condition to granting credit to another person, or as a condition for forbearance on collection of another person's obligation that was in default. The term would not include a spouse whose signature was required on a credit obligation to perfect a security interest under state law, or a person who had executed a guarantee. A person who met the definition of "cosigner" would be considered a cosigner under the bill whether or not he or she were designated as a cosigner on a credit obligation.

Before reporting information about a cosigner to a consumer reporting agency concerning the obligation that was cosigned, or before providing any information to a collection agency or taking any collection action on the obligation against the cosigner, the bill would require that a creditor — other than orally communicating information on the delinquency — do both of the following:

- a) Send a notice to the cosigner by first class mail, indicating that the primary obligor had become delinquent, or had defaulted on the obligation, and that the cosigner was responsible for payment;
- b) Allow the cosigner not less than 30 days from the date the notice was sent to respond by either paying the amount due, or by making other arrangements that were satisfactory to the creditor.

A creditor could not report adverse credit information regarding a cosigner who had responded to a notice under the above terms.

A cosigner who suffered loss as a result of a violation of the bill could bring an action to recover actual damages

or \$250, whichever was greater, together with reasonable attorney's fees. At least 30 days before bringing the action, the cosigner would be required to notify the person alleged to have violated the act, and to include specific evidence of the loss suffered by the violation. If, within 25 days after receiving the notification, the person alleged to have violated the act compensated the cosigner in an amount equal to the loss or otherwise agreed to resolve the matter to the cosigner's satisfaction, then the cosigner would be barred from further recovery, including recovery of reasonable attorney's fees.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no impact on state funds. (7-17-89)

ARGUMENTS:

For:

The bill would provide needed protection for cosigners of obligations which have become delinquent or in default by establishing both a reasonable notification procedure and a time in which a cosigner would be allowed to make arrangements with the lender to satisfy the terms of the obligation. It would allow cosigners an opportunity to remedy a situation before adverse information was reported to a collection agency or a consumer reporting agency or before collection action was taken. Thus, people who cosigned for an obligation, often because their good credit history was needed to make an obligation more secure, could take action to ensure that they would continue to be viewed as "good risks" or as persons with "good credit."

The bill also provides recourse to cosigners who suffer losses as a result of a violation of the bill's provisions. In cases where a cosigner suffers a loss, the provision requiring notification to the institution and sufficient time for correction allows such problems to be remedied before costly legal fees are incurred.

Against:

As written, the bill — while it prevents adverse action against a cosigner for 30 days after notification that the primary obligor has become delinquent — makes no provisions regarding the actions a creditor may take against the primary obligor. The bill also would seem to prohibit creditors from taking action when a cosigner catches up on an obligor's past due payments. In certain situations, when an obligor has repeatedly made late payments on a loan, the creditor would normally "accelerate" the debts (demand that the total amount of the loan be paid off). The provisions of the bill, however, would prevent action by the creditor.

POSITIONS:

The Michigan Consumers Council supports the bill. (7-17-89)

The Michigan Bankers Association supports the bill. (7-17-89)

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The Michigan Association of Small Businessmen supports the bill. (7-24-89)

The Michigan Manufacturers Association has no position on the bill. (7-18-89)

The Michigan State Chamber of Commerce has no position on the bill. (7-18-89)

The Small Business Association of Michigan has no position on the bill. (7-24-89)

The Michigan Credit Union League has no position on the bill. (7-24-89)

The Michigan Association of Auto Dealers has no position on the bill. (7-24-89)

The Michigan League of Savings Institutions has no position on the bill. (7-24-89)

The Michigan Merchants Council opposes the bill since it would result in high record-keeping costs. (7-18-89)