



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 1180 (as enrolled)
Sponsor: Senator Michael J. Bouchard
Committee: Financial Services

Date Completed: 10-29-96

RATIONALE

Under Public Act 52 of 1970, the parties to a loan made by certain types of lenders to a business entity may agree to any rate of interest, notwithstanding the limits outlined in the general usury Act, but subject to any other applicable Michigan or Federal law that regulates rates of interest. In effect, this places the interest rate ceiling for this type of loan at 25%, which is the maximum rate allowed under Michigan's criminal usury law. Some people feel, however, that in order to promote venture capital activity in Michigan, loans from certain types of lenders to business entities should not be subject to the criminal usury ceilings if the parties to a loan agree to a higher rate of interest, and that more types of lenders should be authorized to make those loans. Further, Public Act 52 allows business loans made by other entities or persons to include an agreed upon interest rate of up to 15% per year. Some people believe that parties to those loans should be allowed to agree on any rate up to the criminal usury rate.

CONTENT

The bill would amend Public Act 52 of 1970, which exempts loans to business entities from the provisions of the general usury Act, to include in that exemption the criminal usury provisions of Public Act 259 of 1968.

Public Act 52 provides that, notwithstanding the general usury Act, but subject to any other applicable Michigan or Federal law that regulates rates of interest, it is lawful in connection with an extension of credit to a business entity by a State- or nationally chartered bank, insurance carrier, or finance subsidiary of a manufacturing corporation for the parties to agree in writing to any rate of

interest. Under the bill, those extensions of credit also would be exempt from the criminal usury statute, which sets a maximum rate of 25% (MCL 438.41 & 438.42). Also, the extension of credit could be made by a State- or Federally chartered savings bank, a State- or Federally chartered savings and loan association, a State- or Federally chartered credit union, or a "related entity", in addition to the entities currently authorized to offer the credit. ("Related entity" would mean a business entity, other than a natural person, whose members, owners, partners, or limited partners included a State- or nationally chartered bank, a State- or Federally chartered savings bank, a State- or Federally chartered savings and loan association, a State- or Federally chartered credit union, an insurance carrier, or finance subsidiary of a manufacturing corporation.)

In addition, Public Act 52 provides that, notwithstanding the general usury Act, it is lawful in connection with an extension of credit to a business entity by any person other than a State- or nationally chartered bank, insurance carrier, or finance subsidiary of a manufacturing corporation, for the parties to agree in writing to any rate of interest not exceeding 15% per year. The bill, instead, provides that the parties could agree to any rate of interest not exceeding the rate allowed in the criminal usury statute (25%). Also, an extension of credit could be made by any person other than a State- or nationally chartered bank, a State- or Federally chartered savings bank, a State- or Federally chartered savings and loan association, a State- or Federally chartered credit union, insurance carrier, finance subsidiary of a manufacturing corporation, or a related entity.

MCL 438.61

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Venture capitalists offer loans for entrepreneurial endeavors that tend to be riskier than many other business activities. Since these loans fund uncertain ventures, investors reportedly prefer to offer their capital to borrowers at higher rates of interest. Indeed, Public Act 52 of 1970 exempts these types of loans from the general usury Act. The 25% ceiling specified in the criminal usury law may be so low, however, that it discourages some venture capitalism activity in Michigan. The bill would provide the incentive necessary to encourage venture capitalists to offer loans to businesses, thereby spurring the possibility of business development and economic growth. In addition, by raising the interest rate ceiling for other lenders from the current 15% to the 25% criminal usury level, the bill would facilitate business lending activity by entities other than those authorized to agree to rates higher than the lawful usury levels.

Supporting Argument

Public Act 52 limits the exemption from usury ceilings to business loans offered by a State- or nationally chartered bank, insurance carrier, or finance subsidiary of a manufacturing firm. Other types of lenders, however, apparently have become more active in the business-loan market in recent years. Also, traditional lenders may offer venture capital loans to borrowers through subsidiary or group membership organizations, rather than directly from the depository institution or financing firm. The bill would recognize these developments in the capital market by extending the business loan provision to loans made by a State- or Federally chartered savings bank, savings and loan, or credit union as well as a related entity of any of the authorized lenders.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.