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BILL ANALYSIS

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House Bill 4614 (Substitute H-7)
House Bill 4616 (Substitute H-3)
House Bill 4618 (Substitute H-1)
House Bill 4619
House Bill 4621 (Substitute H-1)
House Bill 4622 (Substitute H-2)
Sponsor: Representative Gary L. Randall (House Bill 4614)
Representative Greg Kaza (House Bill 4616)
Representative James Middaugh (House Bill 4618)
Representative Tom Alley (House Bill 4619)
Representative Kirk A. Profit (House Bill 4621)
Representative Alvin H. Kukuk (House Bill 4622)
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 9-13-95

SUMMARY OF HOUSE BILLS 4614 (Substitute H-7), 4616 (Substitute H-3), 4618 (Substitute H-1), 4619, 4621 (Substitute H-1), and 4622 (Substitute H-2) as passed by the House:

House Bill 4614 (H-7) would create the "Credit Reform Act" to allow a regulated lender to charge, collect, and receive any rate of interest or finance charge up to 25% per year for an extension of credit, and allow a depository institution to charge *any* rate of interest or finance charge on a credit card arrangement. House Bills 4616 (H-3), 4618 (H-1), 4619, 4621 (H-1), and 4622 (H-2) would amend various acts that regulate lenders and credit transactions to bring them into conformity with House Bill 4614 (H-7). Those bills are tie-barred to House Bill 4614.

House Bill 4614 (H-7)

Scope of Bill

The proposed Credit Reform Act would authorize a "regulated lender" to charge, collect, and receive any rate of interest or finance charge for an "extension of credit" not to exceed 25% per year. A "depository institution" could charge, collect, and receive any rate of interest or finance charge for a "credit card arrangement". The bill would not authorize a regulated lender to make an extension of credit of a type that was not permitted by the act under which the regulated lender was chartered, organized, licensed, regulated, or otherwise authorized to extend credit, nor would it limit the authority of the Commissioner of the Financial Institutions Bureau (FIB), the Attorney General, or a county prosecutor to enforce any law under which a regulated lender was chartered, organized, licensed, regulated, or otherwise authorized to extend credit. The bill would not impair the validity of a transaction, rate of interest, fee, or charge that was otherwise lawful.

"Regulated lender" would mean a depository institution; a licensee under the Consumer Financial Services Act, Public Act 379 of 1984 (which regulates certain credit card transactions), the Motor Vehicle Sales Finance Act, the secondary mortgage loan Act, or the Regulatory Loan Act; or a seller under the Home Improvement Finance Act. "Extension of credit" would mean a loan or credit sale made by a regulated lender. "Depository institution" would mean a bank, savings and loan association, savings bank, or a credit union, chartered under state or Federal law, that maintained a principal office or branch in Michigan. "Credit card arrangement" would mean an extension of credit that was not secured by real property and was made to a cardholder of a credit or charge card issued by a regulated lender under

an agreement to grant credit in buying or leasing property or services, obtaining credit or loans, or otherwise.

Except for a fee or charge specifically allowed under the bill in connection with an extension of credit made to an individual for personal, family, or household purposes, the interest or finance charge calculated on the principal balance could be computed only on the basis of the unpaid balance. A written agreement made in connection with a credit sale under the Home Improvement Finance Act, or the Motor Vehicle Sales Finance Act, however, could provide for precomputed interest or its equivalent if any rebate due at prepayment in full were computed according to the actuarial method. In addition, except for a depository institution and as otherwise provided by law, a regulated lender could do either or both of the following:

-- Require a borrower to pay a processing fee in connection with making, closing, disbursing, extending, readjusting, or renewing an extension of credit. The processing fee could not exceed 2% of the amount of the extension of credit.
-- Charge the borrower a late fee for an installment payment that was received by the regulated lender after the expiration of an agreed-upon grace period following the date on which the payment was due. A late fee could not exceed $15 or 5% of the installment payment, whichever was greater.

A regulated lender could charge a fee of up to $25 for a check or other payment instrument that was not honored because of insufficient funds. A regulated lender could not require a borrower or buyer to pay an excessive fee or charge. Processing fees, late fees, and insufficient funds charges would not be considered interest under the bill.

In addition to the interest or finance charges, a depository institution could charge, collect, and receive from a borrower or buyer all fees and charges that were agreed to or accepted by the borrower or buyer including those relating to making, closing, processing, disbursing, extending, committing to extend, readjusting, renewing, collecting payments upon, or otherwise servicing an extension of credit or any occurrence or transaction related to an extension of credit. For any credit card arrangement, all of these allowed fees and charges would be considered interest. A depository institution could not require a borrower or buyer to pay an excessive fee or charge.

Prohibitions

Any of the following provisions contained in a written document made in connection with an extension of credit to an individual for personal, family, or household purposes would be void and unenforceable:

-- A power of attorney to confess a judgment.
-- Unless otherwise expressly provided for by law, a waiver of a borrower's or buyer's rights under the bill.
-- Except as authorized by the bill, an agreement by a borrower or buyer to pay a penalty. (Late payment and prepayment charges would not be penalties.)

A regulated lender could not require, as a condition of approving a loan, that the borrower contract for one or more additional financial services offered by the regulated lender or a particular service provider designated by the regulated lender. This provision, however, would neither preclude a regulated lender from offering a combination of two or more services under prices or terms that were more favorable to the borrower than the prices or terms under which the services would be offered separately, nor prohibit a transaction or requirement that was not prohibited by Federal law. This provision also would not apply to a requirement by a depository institution subject to similar Federal restrictions (12 USC 1972).

Violations

Upon receiving a written complaint alleging a regulated lender's violation of the proposed Act, the FIB Commissioner would have to do one of the following:

-- Investigate the complaint, if the regulated lender were chartered, licensed, or regulated by the Commissioner.
-- If the regulated lender were not subject to the Commissioner's jurisdiction, forward the complaint to the appropriate regulatory or investigatory authority.

The Attorney General, the prosecuting attorney for the county in which an alleged violation occurred, or a borrower could bring an action against a regulated lender to do one or more of the following:

-- Obtain a declaratory judgment that a method, act, or practice of a regulated lender was in violation of the bill.
-- Enjoin a regulated lender who was engaged or about to be engaged in a method, act, or practice that was a violation of the bill.
-- Recover $1,000 and actual damages if the alleged violation were committed by a regulated lender for a non-credit card arrangement or $1,500 and actual damages if the alleged violation involved any other credit arrangements.
-- Recover reasonable attorney fees and the costs in connection with bringing an action under the bill, if the regulated lender were found to have violated the bill.
-- In an action brought by the Attorney General or a county prosecutor, recover a civil fine of up to $10,000 if the regulated lender were found to have willfully and knowingly violated the bill and $20,000 if the regulated lender were found to have persistently violated the bill.

Except for an unintentional and bona fide error or a violation that the lender had corrected, a regulated lender who violated the bill in the extension of credit to a borrower or buyer could not recover any interest or other charges in connection with that extension of credit. The borrower or buyer could recover reasonable attorney fees and court costs for enforcing this provision or in defending against a cause of action brought by a regulated lender who had violated the bill.

The Attorney General or a borrower could bring a class action on behalf of persons injured by a violation of the bill.

A regulated lender would not be liable for a violation of the bill if the lender had fully complied with the Federal Truth-In-Lending Act (15 USC 1601-1667e) and showed that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error would include, but would not be limited to, clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under the bill would not constitute a bona fide error. A regulated lender would not be liable for a violation of the bill if, within 60 days after discovering the violation and before the institution of an enforcement action under the bill, the regulated lender notified the borrower or buyer of the violation and corrected the violation in a manner that, to the extent it was reasonably possible, restored the borrower or buyer to the position in which he or she would have been if the violation had not occurred. The regulated lender would have the burden of proving that a violation was an unintentional and bona fide error.

House Bill 4616 (H-3)

The bill would amend the credit union Act to delete the Act's maximum limit on interest rates for loans made by a credit union and provide, instead, that interest rates on those loans could not exceed the rates of interest permitted by the proposed Credit Reform Act. Currently, the interest rate on loans made by a credit union cannot exceed 15% annually on unpaid balances, except that a rate of 16.5% or less may be charged on a loan made on or before December 31, 1997, for the purchase of a motor vehicle.

House Bill 4618 (H-1)

The bill would amend the secondary mortgage loan Act to delete the Act's maximum limit on interest rates for a secondary mortgage loan and provide, instead, that a licensee could charge, contract for, receive, or collect an interest rate not exceeding the rate permitted by the proposed Credit Reform Act. Currently, the secondary mortgage loan Act allows a licensee to charge, contract for, receive, or collect an interest rate not exceeding 18% per year, computed by the actuarial method.

The bill also would do all of the following:

-- Delete a provision that specifically allows a secondary mortgage loan to include an unsecured loan of $3,000 or more made to a person for personal, family, or household purposes not to be repaid in 90 days or less and not secured by any collateral.
-- Increase the allowable nonrefundable processing fee from 2% to 5% of the gross amount of a loan.
-- Delete a provision allowing a fee for a late payment, if the fee does not exceed the greater of $5 or 5% of the minimum payment due that is received by the licensee 10 or more days after the due date, and, instead, allow a late charge assessed by the licensee as authorized by the proposed Credit Reform Act.
-- Delete a provision that requires the forfeiture of all interest otherwise owing under the terms of a secondary mortgage loan for a

violation of the secondary mortgage loan Act with respect to a particular secondary mortgage transaction, and specify, instead, that in addition to penalties provided by the Act, a violation would be subject to the penalty and remedy provisions of the proposed Credit Reform Act.

House Bill 4619

The bill would amend the Regulatory Loan Act to delete the Act's maximum limit on interest charges for a loan made under the Act and provide, instead, that a licensee could lend money in an amount not to exceed the Act's regulatory loan ceiling and could contract for, compute, and receive interest charges on the loan at a rate permitted by the proposed Credit Reform Act. The bill also would increase the current Act's regulatory loan ceiling to $15,000 from $8,000.

Currently, the Act authorizes a licensee to lend money in an amount up to $8,000 and to charge interest of up to 22% annually on the unpaid balance, except that the allowable interest rate on a loan for the purchase of a motor vehicle cannot exceed the rate specified in the Motor Vehicle Sales Finance Act for that class of vehicle.

The bill also would do all of the following:

-- Specify that a licensee could require a borrower to pay late charges permitted by the proposed Credit Reform Act.
-- Delete a provision that prohibits a licensee from receiving a loan processing fee for a loan contract that is renegotiated, renewed or modified or for a loan contract that is issued to obligate a person to repay a sum of money that was previously lent to a person through a prior loan contract by the licensee.
-- Delete a provision that allows a licensee to require a borrower to pay a fee for a late payment if the fee does not exceed the greater of $5 or 5% of the minimum payment due that is received 10 or more days after the due date.
-- Delete a provision specifying that a loan of an amount or value included within the regulatory loan ceiling for which a greater rate of interest than is permitted under the Act has been charged, regardless of where the loan was made, cannot be enforced within Michigan.

House Bill 4621 (H-1)

The bill would amend the Motor Vehicle Sales Finance Act to delete the Act's maximum limits on finance charges for an installment sale contract covering the retail sale of a motor vehicle and provide, instead, that a finance charge could not exceed the rate permitted by the proposed Credit Reform Act. Currently, the equivalent of 16.5% or less per year on the unpaid balance may be charged for a new or used motor vehicle designated by the manufacturer by a year model of the same or one year prior in which the retail sale is made (Class I); the equivalent of 19% or less per year on the unpaid balance may be charged for a new or used motor vehicle of a model designated by the manufacturer by a year not more than two years prior to the year in which the sale is made (Class II); and the equivalent of 22% or less per year on the unpaid balance may be charged for a new or used motor vehicle of a model designated by the manufacturer by a year more than two years prior to the year in which the sale is made (Class III).

The Motor Vehicle Sales Finance Act also allows the holder of an installment sale contract to extend the scheduled due date, defer a payment or payments, or renew the unpaid time balance of a contract and to contract for, receive, and collect a refinance charge for the extension, deferment, or renewal. The refinance charge cannot exceed 1% per month on a Class I motor vehicle, 1.5% per month on a Class II motor vehicle, or 2% per month on a Class III motor vehicle. The bill would delete those refinance charge limits and provide, instead, that refinance charges could not exceed the rates allowed under the proposed Credit Reform Act.

In addition, the Motor Vehicle Sales Finance Act allows a default charge of up to 2% per month to be collected on each installment payment that is not paid on or before the due date of payment. The bill would delete the 2% maximum default charge and provide, instead, that a default charge could not exceed the rate permitted in the proposed Credit Reform Act.

The bill also would delete a provision that prohibits a contract holder, sales finance company, or banking institution from paying to any installment seller a sum of money or other consideration for any purpose, in connection with any installment sale transaction, other than a sum equal to the

unpaid time balance reduced by the portion of the finance charge that is unearned at the time an installment sale contract is acquired by the holder, sales finance company, or banking institution. This provision also specifies that if the seller prepares the credit information, contract, note, or mortgage and application for title, then the holder, finance company, or banking institution may pay the seller a service fee of not more than 2% on the principal amount financed on a Class I vehicle, not more than 3% on a Class II or III vehicle, and an additional amount of up to 1/12 of the amount paid to the seller for each month the principal amount is financed in excess of 12 months but for not more than 24 months. These service fees must be paid from the finance charge authorized by the Motor Vehicle Sales Finance Act and cannot be charged to the buyer in addition to the finance charge.

The bill also would do all of the following:

-- Specify that, if a motor vehicle were covered by an installment sale contract, the buyer could not transfer equity in that vehicle to another person without the written consent of the holder of the contract, and that the holder could charge a transfer fee of $25.
-- Delete buses and trucks from the Act's exceptions to the definition of "motor vehicle".
-- Specify that "installment buyer" would mean a person who buys, hires, or leases a motor vehicle "for personal, family, or household use and not for commercial, business, or agricultural use".

House Bill 4622 (H-2)

The bill would amend the Retail Installment Sales Act to delete the Act's maximum limit on the "time price differential" on a retail installment contract and a retail charge agreement and provide, instead, that the time price differential could not exceed the rate of interest or its equivalent permitted a regulated lender by the proposed Credit Reform Act. ("Time price differential" means the amount paid or payable for the privilege of purchasing goods or services in installments over a period of time.)

Currently, a retail installment contract may provide for a time price differential of up to $12 per $100 per year on a principal balance that does not exceed $500 and up to $10 per $100 per year on a principal balance in excess of $500. A retail charge agreement may provide for a time price differential in an amount not exceeding 1.7% of the unpaid balance per month.

The bill also would delete a provision specifying that, in a retail installment contract for the purchase of goods or services in which there is a separately stated time price differential, a portion of the payment made during the taxable year under the contract must be treated as interest. The portion of a payment to be treated as interest, under this provision, is 6% of the average unpaid balance under the contract during the taxable year.

The current Act allows the holder of a retail installment contract, upon agreement in writing with the buyer, to extend the scheduled due date or defer the scheduled payment of all or any part of an installment payable under the contract. The bill would delete a provision limiting the charge for an extension or deferral to 1.25% per month on the amount extended or deferred. In addition, the Act allows the holder of a retail installment contract, upon agreement in writing with the buyer, to refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The bill would delete a provision limiting the refinance charge to the rate otherwise allowed for a retail installment contract under the Act and provides, instead, that the refinance charge could not exceed the rate of interest or its equivalent permitted a regulated lender by the Credit Reform Act.

The current Act allows the holder of an installment contract or retail charge agreement to collect a delinquency and collection charge of $5 on an installment in default for more than 10 days, or in lieu of a delinquency and collection charge, interest after maturity of each installment not to exceed the highest lawful contract rate. The bill would amend this provision to delete the specified amount of the charge and the option of additional interest charges, and specifies that a delinquency and collection charge would not be a liquidated damage.

The bill also specifies that an agreement by a buyer in a retail installment contract or retail charge agreement to pay liquidated damages would be void and unenforceable. Also, a retail seller could not require, as a condition of approving a retail installment transaction, that the buyer contract for one or more financial services offered by the retail seller or a particular service provider designated by the seller. This provision,

however, would not preclude a retail seller from offering a combination of two or more services under more favorable prices or terms.

The Act specifies that the Attorney General or the prosecuting attorney of the county in which a violation occurs may bring an action in the name of the State against any person to enjoin any violation of the Act. The bill would delete this authorization and, instead, specifies that the Attorney General, the prosecuting attorney for the county in which an alleged violation occurred, or a borrower could bring an action against a retail seller to do one or more of the following:

-- Obtain a declaratory judgment that a method, act, or practice of a retail seller was in violation of the Act.
-- Enjoin a retail seller who was engaged or about to be engaged in a method, act, or practice that was a violation of the Act.
-- Recover $1,000 and actual damages if the alleged violation were committed by a retail seller for a non-credit card arrangement or $1,500 and actual damages if the alleged violation involved any other credit arrangements.
-- Recover reasonable attorney fees and the costs in connection with bringing an action under the Act, if the retail seller were found to have violated the Act.
-- In an action brought by the Attorney General or a county prosecutor, recover a civil fine of up to $10,000 if the retail seller were found to have willfully and knowingly violated the Act and $20,000 if the retail seller were found to have persistently violated the Act.

Except for an unintentional and bona fide error, a retail seller who violated the Act in the extension of credit to a borrower or buyer could not recover any interest or other charges in connection with that extension of credit. The borrower or buyer could recover reasonable attorney fees and court costs for enforcing this provision or in defending against a cause of action brought by a regulated lender who had violated the Act.

The Attorney General or a borrower could bring a class action on behalf of persons injured by a violation of the Act.

A retail seller would not be liable for a violation of the Act if the lender had fully complied with the Federal Truth-In-Lending Act (15 USC 1601-1667e) and showed that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error would include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under the Retail Installment Sales Act would not constitute a bona fide error. A violation resulting from a bona fide error could be corrected in the same manner as provided for in the Federal Truth-In-Lending Act (15 USC 1640(b)). (The Federal Act provides that a creditor has no liability if, within 60 days after discovering an error, and prior to the beginning of a legal action or the receipt of a written notice of the error from the obligor, the creditor notifies the person of the error and makes necessary adjustments in the appropriate account.) The retail seller would have the burden of proving that a violation was an unintentional and bona fide error.

MCL 490.1a et al. (H.B. 4616)
493.51 et al. (H.B. 4618)
493.1 et al. (H.B. 4619)
492.102 et al. (H.B. 4621)
445.852 et al. (H.B. 4622)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The Financial Institutions Bureau, Department of Commerce, would not be required to make significant changes in support activities for loan practices of regulated lending institutions. There would be no fiscal impact on the Department of Commerce or on local governmental units.

Fiscal Analyst: K. Lindquist

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