



SENATE BILL No. 438

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

A bill to allow certain regulated lenders to charge interest for extensions of credit; to prescribe the powers and duties of certain state agencies and officials; to provide for remedies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "credit reform act".

3 Sec. 2. As used in this act:

4 (a) "Borrower" means a person who obtains an extension of
5 credit from a regulated lender.

6 (b) "Commissioner" means the commissioner of the financial
7 institutions bureau of the department of commerce.

8 (c) "Credit sale" means an extension of credit for the sale
9 of goods or services by a seller authorized to make sales under
10 the home improvement finance act, Act No. 332 of the Public Acts

1 of 1965, being sections 445.1101 to 445.1431 of the Michigan
2 Compiled Laws or the retail installment sales act, Act No. 224 of
3 the Public Acts of 1966, being sections 445.851 to 445.873 of the
4 Michigan Compiled Laws, or a licensee under the motor vehicle
5 sales finance act, Act No. 27 of the Extra Session of 1950, being
6 sections 492.101 to 492.141 of the Michigan Compiled Laws.

7 (d) "Depository institution" means a bank, savings and loan
8 association, savings bank, or a credit union chartered under
9 state or federal law which maintains a principal office or branch
10 in this state.

11 (e) "Extension of credit" means a loan or credit sale made
12 by a regulated lender.

13 (f) "Person" means an individual, corporation, partnership,
14 association, governmental entity, or any other legal entity.

15 (g) "Regulated lender" means a depository institution, a
16 licensee under the consumer financial services act, Act No. 161
17 of the Public Acts of 1988, being sections 487.2051 to 487.2072
18 of the Michigan Compiled Laws, Act No. 379 of the Public Acts of
19 1984, being sections 493.101 to 493.114 of the Michigan Compiled
20 Laws, the motor vehicle sales finance act, Act No. 27 of the
21 Public Acts of the Extra Session of 1950, Act No. 125 of the
22 Public Acts of 1981, being sections 493.51 to 493.81 of the
23 Michigan Compiled Laws, or the regulatory loan act of 1963, Act
24 No. 21 of the Public Acts of 1939, being sections 493.1 to 493.26
25 of the Michigan Compiled Laws, or a seller under the home
26 improvement finance act, Act No. 332 of the Public Acts of 1965

1 or the retail installment sales act, Act No. 224 of the Public
2 Acts of 1966.

3 Sec. 3. This act does not authorize a regulated lender to
4 make an extension of credit of a type that is not permitted by
5 the act under which the regulated lender is chartered, organized,
6 licensed, regulated, or otherwise authorized to extend credit.

7 Sec. 4. (1) A regulated lender may charge, collect, and
8 receive any rate of interest or finance charge for an extension
9 of credit.

10 (2) The interest or finance charge to be assessed on the
11 principal balance shall be computed only on the basis of the
12 unpaid balance.

13 Sec. 5. The written agreement made in connection with a
14 credit sale under the home improvement finance act, Act No. 332
15 of the Public Acts of 1965, being sections 445.1101 to 445.1431,
16 the motor vehicle sales finance act, Act No. 27 of the Public
17 Acts of the Extra Session of 1950, being sections 492.101 to
18 492.141 or the retail installment sales act, Act No. 224 of the
19 Public Acts of 1966, being sections 445.851 to 445.873, may pro-
20 vide for precomputed interest or its equivalent if any rebate due
21 at prepayment in full is computed according to the actuarial
22 method.

23 Sec. 6. Except as otherwise provided by law, a regulated
24 lender may do either both of the following:

25 (a) Require the borrower to pay a processing fee in connec-
26 tion with making, closing, disbursing, extending, readjusting, or
27 renewing an extension of credit.

1 (b) Charge the borrower a late fee for an installment
2 payment that is received by the regulated lender after an
3 agreed-upon grace period beyond which the payment was due has
4 expired.

5 Sec. 7. In addition to the interest or finance charges that
6 are authorized under section 4, a depository institution may
7 charge, collect, and receive from a borrower or buyer all fees
8 and charges that are agreed to or accepted by the borrower or
9 buyer including, but not limited to, those relating to making,
10 closing, processing, disbursing, extending, committing to extend,
11 readjusting, renewing, collecting payments upon, or otherwise
12 servicing an extension of credit or any occurrence or transaction
13 related to an extension of credit. All fees and charges allowed
14 by this section are considered interest.

15 Sec. 8. Any of the following provisions contained in a
16 written document made in connection with an extension of credit
17 to an individual are void and unenforceable:

18 (a) A power of attorney to confess a judgment.

19 (b) Unless otherwise expressly provided for by law, a waiver
20 of a borrower's or buyer's rights under this act.

21 (c) Except as authorized by this act, an agreement by a bor-
22 rower or buyer to pay liquidated damages. A late payment charge
23 is not a liquidated damage.

24 Sec. 9. (1) A regulated lender shall not require as a con-
25 dition of approving a loan that the borrower contract for 1 or
26 more financial services offered by the regulated lender or a
27 particular service provider designated by the regulated lender.

1 (2) This section does not preclude a regulated lender from
2 offering a combination of 2 or more services under prices or
3 terms that are more favorable to the borrower than the prices or
4 terms the services would be offered separately.

5 (3) This section does not prohibit a depository institution
6 from contracting to provide 1 or more financial services offered
7 by the institutions that are not prohibited by federal law.

8 Sec. 10. Upon receipt of a written complaint alleging a
9 violation of this act by a regulated lender, the commissioner
10 shall do 1 of the following:

11 (a) Investigate the complaint if the regulated lender is
12 chartered, licensed, or regulated by the commissioner.

13 (b) If the regulated lender is not subject to the jurisdic-
14 tion of the commissioner, forward the complaint to the appropri-
15 ate regulatory or investigatory authority.

16 Sec. 11. The attorney general, the prosecuting attorney for
17 the county where an alleged violation occurred, or a borrower may
18 bring an action against a regulated lender to do 1 or more of the
19 following:

20 (a) Obtain a declaratory judgment that a method, act, or
21 practice of a regulated lender is a violation of this act.

22 (b) Enjoin a regulated lender who is engaging or about to
23 engage in a method, act, or practice that is a violation of this
24 act.

25 (c) Recover actual damages resulting from a violation of
26 this act or \$250.00, whichever is greater.

1 (d) Recover reasonable attorney fees and the costs in
2 connection with bringing an action under this act.

3 Sec. 12. A regulated lender is not liable for a violation
4 of this act if the regulated lender shows that the violation was
5 an unintentional and bona fide error notwithstanding the mainte-
6 nance of procedures reasonably adopted to avoid the error.
7 Examples of a bona fide error include, but are not limited to,
8 clerical, calculation, computer malfunction, programming, or
9 printing errors. An error in legal judgment with respect to a
10 person's obligations under this act is not a bona fide error. A
11 violation of this act resulting from a bona fide effort may be
12 corrected in the same manner as provided for in section 130(b) of
13 the truth-in-lending act, 15 U.S.C. 1640(b).

14 Sec. 13. This act does not limit the authority of the com-
15 missioner, the attorney general, or a county prosecutor to
16 enforce any law under which a regulated lender is chartered,
17 organized, licensed, regulated, or otherwise authorized to extend
18 credit.