



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

MAXIMUM AUTO DOCUMENT PREP FEE: REVISE AND INCREASE

House Bill 6446 as enrolled
Public Act 699 of 2002
Second Analysis (1-13-03)

Sponsor: Rep. Marc Shulman
House Committee: Insurance and
Financial Services
Senate Committee: Transportation and
Tourism

THE APPARENT PROBLEM:

The Motor Vehicle Sales Finance Act was established to protect retail installment buyers of motor vehicles by regulating installment sales, including their financing and other costs. Under the act, installment sellers impose various fees on buyers in order to cover certain costs related to a sale. One example is a "documentary fee," which sellers say is used to cover their costs in preparing paperwork involved in a sale, as well as the cost of gas and personnel to take the paperwork to the secretary of state for title transfer and licensing. The fees are added to the vehicle's cash price, and generally appear for the first time when the sales contract is presented to the buyer on the day the sale is completed.

Before 1990, the "documentary fee" ranged from \$18 to \$450. At the time the Financial Institutions Bureau requested an attorney general's opinion as to whether the fees were allowed under the law, and Opinion of the Attorney General (OAG) 6594 of 1989 was issued. That opinion said that "documentary fees" were prohibited because the act did not specifically authorize them. However, in 1990, recognizing that documentary fees are justifiable when they are not excessive, the bureau did not oppose an amendment to the Motor Vehicle Sales Finance Act supported by the Michigan Automobile Dealers Association, that authorizes a documentary fee of up to \$40.

Recently, legislation has been proposed to increase the maximum allowable "documentary fee" from \$40 to up to \$160, depending on the value of the automobile, and then beginning in 2005, indexing the \$160 cap to allow increases in the fee, calculated every two years and based on the rate of change in the Consumers Price Index.

THE CONTENT OF THE BILL:

Under the Motor Vehicle Sales Finance Act, installment sellers are permitted to charge buyers for various costs related to the sale of a vehicle, such as the cost of insurance premiums and fees for the registration of the vehicle and issuance of license plates. Public Act 27 of 1990 allowed installment sellers to impose a "documentary fee" to cover costs incurred in preparing paper work involved in a sale, as well as the cost of gas and personnel to take the paper work to the secretary of state for title transfer and licensing. Public Act 27 set a cap of \$40 for this fee.

House Bill 6446 would amend the act to increase the amount that can be charged as a documentary preparation fee. Under the bill, the fee could not exceed five percent of the cash price of the motor vehicle or \$160, whichever was less. Then, beginning on January 1, 2005, the administrator (the commissioner of the Office of Financial and Insurance Services) would have to adjust the \$160 maximum for the documentary preparation fee every two years to reflect the cumulative percentage change in the consumer price index for the two immediately preceding calendar years, as determined by the administrator. The administrator would have to round the adjustment to the nearest \$10 increment when setting the fee, but would have to carry over and use the absolute value to calculate the next two-year adjustment. "Consumer price index" would mean the U.S. consumer price index for all urban consumers, U.S. city average, as defined and reported by the U.S. Department of Labor, Bureau of Labor Statistics.

In addition, the bill would require that the cash price of any extended warranty or service contract would have to be listed as a separate item on the installment sale contract. Further, the bill would make a number

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of editorial changes to update and clarify language in the act.

MCL 492.113 and 492.118

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that the bill would increase the maximum allowable document preparation fee that could be charged by automobile installment sellers, and would adjust the fee every two years on the Consumer Price Index inflation rate. Since the bill involves a fee paid to a private entity, it would have no fiscal impact on the state or local units of government. (1-6-03)

ARGUMENTS:

For:

This legislation would permit, but not require, auto dealers to increase the current dollar limit on their document preparation fee. A preparation fee was first authorized by law in 1990. The fee increase described in this bill is a fair one, similar to the processing fee caps in other parts of the financial services industry. For example, secondary mortgage loan licensees are authorized to assess a “processing fee” of up to five percent of the gross amount of the loan. Depository institutions (banks, savings banks, and credit unions) are permitted to charge any amount for fees and charges as long as the fee is not considered “excessive.” Other regulated lenders may charge a “processing fee” not to exceed two percent of the amount of the extension of credit as long as the fee is not “excessive.”

According to testimony given by the Auto Dealers of Michigan, the retail sale or lease of a motor vehicle is one of the most complex consumer transactions regulated by government. In particular, regulatory requirements govern titling, registration and plating, criminal background checks, special sales tax remittance, documentation of the sales transaction and insurance coverage, and providing a number of consumer disclosures.

Against:

Duties related to preparing documents on a sale are part of doing business, and any cost incurred to meet these requirements should be reflected in the cash price of the vehicle, or the interest rate charged. When the fees are imposed in addition to the cash price—indeed, when the fees are calculated as a percentage of the cash price, and then added to it—

the sales tax on the transaction that is collected by the state is reduced.

Further, the fee increase proposed in this bill is far too great—an increase from \$40 to as much as \$160, a four-fold (or 400 percent) increase. Sellers who impose document preparation fees of this kind and size will risk surprising their customers at the final point of sale. Further, they will have imposed a substantial fee for what is, according to committee testimony, a document preparation ritual that takes less than 30 minutes—one that increasingly relies upon pre-printed forms and uncomplicated calculations that are efficiently completed with the use of computer software.

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.