



**House
Legislative
Analysis
Section**

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CONSUMER CREDIT REFORM

House Bill 5314

Sponsor: Rep. James Middaugh

House Bill 5315

Sponsor: Rep. Gary L. Randall

House Bill 5318

Sponsor: Rep. Tom Alley

Committee: Business & Finance

Complete to 3-11-94

A SUMMARY OF HOUSE BILLS 5314, 5315, AND 5318 AS INTRODUCED 2-8-94

House Bills 5314 and 5318 would amend the acts that regulate non-depository financial institutions to conform with provisions relating to loan interest rates, processing fees, and penalties in a new consumer credit act which would be established to regulate depository financial institutions. House Bills 5314 and 5318 are each tie-barred to House Bill 5315, which would establish the proposed Consumer Credit Reform Act (CCRA).

House Bill 5315 would create the Consumer Credit Reform Act (CCRA), which would establish the conditions under which regulated lenders could enter into contracts involving credit sales and other consumer loans, specify the maximum interest rates that regulated lenders could charge on loans or credit sales, and provide civil remedies for those alleging violations of the act.

Definitions. The act would define "credit sale" to mean a sale by "a person engaged in the business of selling goods or services for which payment, by written agreement, is to be made in 1 or more installments and on which a finance charge will be imposed". A credit sale would include only an installment sale made under the provisions of the Retail Installment Sales Act, the Home Improvement Finance Act, or the Motor Vehicle Sales Finance Act. A "regulated lender" would be defined to mean a depository financial institution with a principal or branch office in Michigan; or a person licensed under the Consumer Financial Services Act, the Regulatory Loan Act, the Motor Vehicle Sales Finance Act, the Retail Installment Sales Act, the Home Improvement Finance Act, or Public Act 125 of 1981, which regulates those who deal in secondary mortgages and other unsecured loans.

Maximum Interest Rates/Finance Charges. A regulated lender could charge an annual simple interest rate of up to 15 percent on a nonconsumer loan. For an extension of credit that was primarily for personal, family, or household purposes, the bill would establish the following maximum annual finance charges and annual simple interest rates that could be charged on credit sales or loans:

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- Not more than 22 percent for a personal loan of up to \$8,000.
- Not more than 18 percent for a personal loan of more than \$8,000.
- Not more than 20.4 percent for open-end credit.
- Not more than 18 percent for a second mortgage loan.
- Not more than 20.4 percent for an installment contract entered into under the provisions of the Retail Installment Sales Act.
- Not more than 16.5 percent for an installment contract entered into under the provisions of the Home Improvement Finance Act.
- For a Class I auto loan (a loan on a new or one-year old vehicle), not more than 16.5 percent on the unpaid balance.
- For a Class II auto loan (a loan on a new or one- or two-year-old vehicle), not more than 19 percent on the unpaid balance.
- For a Class III auto loan (a loan on a new or used vehicle more than two years old), not more than 22 percent on the unpaid balance.

Restricted Practices. The following restrictions would apply under the bill:

- ** Inducing or permitting a borrower to negotiate or enter into two or more personal loans at the same time would be prohibited.
- ** Interest, or its expressed equivalent, on a loan could not be added or deducted in advance and would be computed only on the basis of the unpaid balance.
- ** A credit sale for personal, family, or household use could provide for precomputed interest or its equivalent, provided that any rebate due to prepayment in full of a credit sale contract was computed according to the actuarial method.
- ** A lender could not require that a borrower contract for one or more of a lender's additional financial services, or a particular service provider, as a condition of the granting of a loan or credit sale (this restriction would not preclude a lender from offering two or more services in combination, under prices or terms that were more favorable to the borrower at the time than if offered separately).

In addition, nothing in the bill could be construed as authorization for a regulated lender to make loans or extend credit of a type that wasn't permitted under the act under which the lender was regulated.

Permitted Practices. A regulated lender could require a borrower to pay a processing fee in connection with making, closing, disbursing, extending, readjusting, or

renewing a loan; and could contract with a borrower to charge a late installment payment fee of \$5 or five percent of the payment, for a payment that was ten or more days late.

Written Agreements. When presented to a borrower for signature, a written agreement would have to contain all the elements required by state or federal law. Any of the following provisions would be considered void and unenforceable: a power of attorney to confess judgment; a provision by which a borrower waived legal rights, unless explicitly permitted by law; and a provision by which a borrower agreed to pay liquidated damages.

Violations. A complaint against a regulated lender would be investigated by the commissioner of the Financial Institutions Bureau in the Department of Commerce, if the lender were licensed or chartered by the FIB. Otherwise, the complaint would be sent to the appropriate investigatory authority. In addition, the attorney general, the county prosecuting attorney, or a borrower could bring an action to obtain a declaratory judgment that a practice violated the act; enjoin a regulated lender who was engaging in, or was about to engage in, a practice that violated the act; or receive actual damages, or \$250, whichever was greater, together with reasonable attorney fees and costs.

A regulated lender would not be considered liable for a violation of the act if he or she showed that the violation was unintentional and resulted from a bona fide error such as a clerical, calculation, computer, or printing error, which would have to be corrected in the same manner as provided under the federal Truth-In-Lending Act. An error of legal judgment would not be considered a bona fide error. A borrower could not bring an action for a violation of the act and also bring a separate action for the same violation under any other act under which the lender was regulated.

House Bill 5314 would amend Public Act 125 of 1981 (MCL 493.51 et al.), which regulates those who deal in secondary mortgages and other unsecured loans. Currently, the act defines a "secondary mortgage loan" as a loan of at least \$3,000, which is secured by a mortgage upon an interest in real property used as a dwelling, is subject to a prior mortgage, and which may include an "unsecured loan" (defined as a loan of \$3,000 or more that has been made for personal purposes, need not be repaid within 90 days, and is not secured by any collateral). The bill would amend the act to delete current provisions relating to unsecured loans and to specify, instead, that a secondary mortgage loan could include a "personal loan," which would be defined as a loan that was not secured by real property and that was made for personal, family, or household purposes.

House Bill 5314 would also delete current provisions of the act relating to the interest rates on secondary mortgage loans and to forfeiture of interest penalties for lenders who violate certain provisions relating to secondary mortgage transactions. The bill would instead make reference to applicable provisions in the proposed CCRA. The bill would also permit a licensee to assess a late charge, as proposed under the CCRA. In addition, the bill would delete the present ceiling of \$200 on loan processing fees, leaving only the requirement that the fee be not more than two percent of the gross amount of the loan.

House Bill 5318 would amend the Regulatory Loan Act (MCL 493.13 et al.) to delete current restrictions on interest rates on loans, on processing fees, and on penalties for

certain violations of the act, and instead make reference to applicable provisions of the proposed CCRA. Under the bill, a licensee would be permitted to assess a late charge, as proposed under the CCRA. The bill would also delete current provisions that prohibit the collection of loan processing fees for a loan contract that has been renegotiated, or that the licensee has issued through a prior loan in order to obligate a person to repay the prior loan.