

HOUSE BILL No. 4323

March 11, 2003, Introduced by Reps. Ruth Johnson, Vander Veen, Voorhees, Zelenko and Rocca and referred to the Committee on Commerce.

A bill to prohibit certain methods, acts, and practices in consumer credit and debit transactions; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for certain investigations; 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 "consumer credit privacy act".

3 Sec. 2. As used in this act:

4 (a) "Consumer credit transaction" means a sale, exchange, or
5 other transaction where goods, property, or services intended
6 primarily for personal, family, or household purposes are
7 transferred in exchange for payment made by credit or debit
8 card. The term includes a consumer transaction where a consumer
9 is required to provide a credit card as security for payment and

1 payment is made by any means. The term also includes an
2 application for and issuance of a discount card to a consumer.

3 (b) "Discount card" means a card that results in a discount,
4 price reduction, or rebate if presented by a consumer during a
5 retail sale of goods, but does not include a credit or debit
6 card.

7 (c) "Documentary material" includes the original or copy of a
8 book, record, report, memorandum, paper, communication,
9 tabulation, map, chart, photograph, mechanical transcription, or
10 other tangible document or recording, wherever situated.

11 (d) "Person" means a natural person, corporation, trust,
12 partnership, limited liability company, association, or other
13 legal entity.

14 (e) "Personal information" means a social security number,
15 account number, driver license number, identification card
16 number, telephone number, or address of a consumer or the
17 consumer's family.

18 Sec. 3. The following methods, acts, or practices in a
19 consumer credit transaction are unlawful:

20 (a) On or after January 1, 2007 if the cash register or other
21 machine or device that electronically prints the receipt is in
22 use prior to June 1, 2004, and on or after June 1, 2004 in any
23 other consumer credit transaction, electronically issuing or
24 printing a receipt that displays any part of the expiration date
25 of a credit or debit card or more than the last 5 digits of the
26 consumer's account number. This subdivision does not apply if
27 the only receipt issued in a consumer credit transaction is a

1 credit card or debit card receipt on which the account number or
2 expiration date is handwritten, mechanically imprinted, or
3 photocopied.

4 (b) Failing to destroy any physical receipts or records of a
5 consumer credit transaction retained by a person other than the
6 consumer, within 8 years of the date of the consumer credit
7 transaction, or after the closing of any open state or federal
8 tax audit commenced at any time within 8 years of the date of the
9 consumer credit transaction, whichever is longer.

10 (c) In a consumer credit transaction where a person requires
11 a consumer to provide a credit card as security for payment, the
12 person submits to the credit card company a charge to the
13 consumer's account, and the consumer elects not to pay for the
14 transaction with the credit card, failing to contact the credit
15 card company and cancel the charge within 2 business days of the
16 consumer's tender of the payment to the person.

17 (d) Selling or furnishing personal information about a
18 consumer, obtained in connection with an application for a
19 discount card or by analysis of the consumer's purchases using
20 the discount card, to another person, individually or in bulk,
21 for purposes of surveys, marketing, and solicitations, without
22 furnishing the consumer with a conspicuous opportunity to
23 prohibit the disclosure of the personal information.

24 (e) Selling or furnishing personal information about a
25 consumer, obtained in connection with an application for a
26 discount card or by analysis of the consumer's purchases using
27 the discount card, to another person, individually or in bulk,

1 for purposes of surveys, marketing, and solicitations, if the
2 consumer has elected to prohibit the disclosure of personal
3 information.

4 (f) In connection with an application or request for a
5 discount card by a consumer, or offer or issuance of a discount
6 card to a consumer, requiring the consumer to provide personal
7 information.

8 (g) In a consumer credit transaction where a consumer uses a
9 credit card for payment, requiring that the consumer provide
10 personal information that is not required by the credit card
11 issuer to complete the credit card transaction, except that the
12 address or telephone number of the consumer may be required in
13 any of the following circumstances:

14 (i) The address or telephone number is necessary to ship,
15 deliver, or install purchased goods or for a special order.

16 (ii) The seller of the good or service processes credit card
17 transactions by mailing transaction forms to a designated bank
18 card center for settlement.

19 Sec. 4. (1) If the attorney general has probable cause to
20 believe that a person has engaged, is engaging, or is about to
21 engage in a method, act, or practice that is unlawful pursuant to
22 section 3, and he or she gives notice in accordance with this
23 section, the attorney general may bring an equitable action to
24 restrain the defendant by temporary or permanent injunction from
25 engaging in the method, act, or practice. The action may be
26 brought in the circuit court in the county where the defendant is
27 established or conducts business or, if the defendant is not

1 established in this state, in Ingham county. The court may award
2 costs to the prevailing party.

3 (2) In addition to any other relief granted under
4 subsection (1), the court may impose a civil fine for a violation
5 of section 3(b), (d), (e), (f), or (g) of not more than
6 \$5,000.00, or a civil fine for a violation of section 3(a) or (c)
7 of not more than \$5,000.00 for each day the violation continues.
8 For a persistent and knowing violation of section 3, the court
9 may impose a civil fine of not more than \$25,000.00.

10 (3) Unless waived by the court on good cause shown not less
11 than 10 days before the commencement of an action under this
12 section, the attorney general shall notify the person of his or
13 her intended action. The person shall have 7 business days to
14 cease and desist from the alleged unlawful method, act, or
15 practice or to confer with the attorney general in person, by
16 counsel, or by other representative. The notice may be given to
17 the person by first-class mail to his or her usual place of
18 business or, if the person does not have a usual place of
19 business, to his or her last known address, or, with respect to a
20 corporation, only to a resident agent who is designated to
21 receive service of process or to an officer of the corporation.

22 (4) A prosecuting attorney or law enforcement officer
23 receiving notice of an alleged violation of this act, or of a
24 violation of an injunction, order, decree, or judgment issued in
25 an action brought pursuant to this section, or of an assurance
26 under this act, shall immediately forward written notice of the
27 violation together with any information he or she may have to the

1 office of the attorney general.

2 (5) A person who knowingly violates the terms of an
3 injunction, order, decree, or judgment issued pursuant to this
4 section shall forfeit and pay to the state a civil penalty of not
5 more than \$5,000.00 for each violation. For the purposes of this
6 section, the court issuing an injunction, order, decree, or
7 judgment shall retain jurisdiction, the cause is continued, and
8 the attorney general may petition for recovery of a civil penalty
9 as provided by this section.

10 Sec. 5. (1) If the attorney general has authority to
11 institute an action or proceeding under section 4, he or she may
12 accept an assurance of discontinuance of a method, act, or
13 practice that is alleged to be unlawful under section 3 from the
14 person who is alleged to have engaged, be engaging, or be about
15 to engage in the method, act, or practice. The assurance is not
16 an admission of guilt and may not be introduced in any other
17 proceeding. The assurance may include a stipulation for any or
18 all of the following:

19 (a) The voluntary payment by the person for the costs of
20 investigation.

21 (b) An amount to be held in escrow pending the outcome of an
22 action.

23 (c) An amount for restitution to an aggrieved person.

24 (2) An assurance of discontinuance shall be in writing and
25 may be filed with the circuit court in the county where the
26 defendant is established or conducts business or, if the
27 defendant is not established in this state, in Ingham county.

1 The clerk of the court shall maintain a record of the filings.
2 Unless rescinded by the parties or voided by a court for good
3 cause, the assurance may be enforced in the circuit court by the
4 parties to the assurance. The assurance may be modified by the
5 parties or by a court for good cause.

6 Sec. 6. (1) Upon the ex parte application of the attorney
7 general to the circuit court in the county where the defendant is
8 established or conducts business or, if the defendant is not
9 established in this state, in Ingham county, the circuit court,
10 if it finds probable cause to believe a person has engaged, is
11 engaging, or is about to engage in a method, act, or practice
12 that is unlawful under this act, may, after an ex parte hearing,
13 issue a subpoena compelling a person to appear before the
14 attorney general and answer under oath questions relating to an
15 alleged violation of this act. A person served with a subpoena
16 may be accompanied by counsel when the person appears before the
17 attorney general. The subpoena may compel a person to produce
18 the books, records, papers, documents, or things relating to an
19 alleged violation of this act. During the examination of
20 documentary material under the subpoena, the court may require a
21 person having knowledge of the documentary material or the
22 matters contained therein to attend and give testimony under oath
23 or acknowledgment with respect to the documentary material.

24 (2) A subpoena described in this section shall include the
25 notice of the time, place, and cause of the taking of testimony,
26 the examination, or the attendance and shall allow not less than
27 10 days before the date of the taking of testimony or

1 examination, unless for good cause shown the court shortens that
2 period of time.

3 (3) Service of a notice described in this section shall be in
4 the manner provided and subject to the provisions that apply to
5 service of process upon a defendant in a civil action commenced
6 in the circuit court.

7 (4) A notice described in this section shall meet all of the
8 following:

9 (a) State the time and place for the taking of testimony or
10 the examination and the name and address of the person to be
11 examined. If the name is not known, the notice shall give a
12 general description sufficient to identify the person or the
13 particular class or group to which the person belongs.

14 (b) State a reference to this section and the general subject
15 matter under investigation.

16 (c) Describe with reasonable specificity the documentary
17 material to be produced, so as to indicate fairly the material
18 demanded.

19 (d) Prescribe a return date within which the documentary
20 material shall be produced.

21 (e) Identify the members of the attorney general's staff to
22 whom the documentary material shall be made available for
23 inspection and copying.

24 (5) At any time before the date specified in the notice, upon
25 motion for good cause shown, the court may extend the reporting
26 date or modify or set aside the notice and subpoena.

27 (6) The documentary material or other information obtained by

1 the attorney general pursuant to an investigation under this
2 section are confidential records of the office of the attorney
3 general and shall not be available for public inspection or
4 copying or divulged to any person except as provided in this
5 section. The attorney general may only disclose documentary
6 material or other information as follows:

7 (a) To other law enforcement officials.

8 (b) In connection with an enforcement action brought pursuant
9 to this act.

10 (c) To the commissioner of the financial institutions
11 bureau.

12 (d) Upon order of the court, to a party in a private action
13 brought pursuant to this act.

14 (7) A person who discloses information designated
15 confidential by this section, except as permitted by
16 subsection (6) or under court order, is guilty of a misdemeanor
17 and may be fined not more than \$2,500.00, or imprisoned for not
18 more than 1 year, or both.

19 Sec. 7. (1) A person upon whom a notice is served pursuant
20 to section 6 shall comply with the terms of the notice unless the
21 order of the circuit court provides otherwise.

22 (2) A person who does any of the following shall be assessed
23 a civil penalty of not more than \$5,000.00:

24 (a) Knowingly without good cause fails to appear when served
25 with a notice.

26 (b) Knowingly avoids, evades, or prevents compliance, in
27 whole or in part, with an investigation, including the removal

1 from any place, concealment, destruction, mutilation, alteration,
2 or falsification of documentary material in the possession,
3 custody, or control of a person subject to the notice.

4 (c) Knowingly conceals relevant information.

5 (3) The attorney general may file a petition in the circuit
6 court in the county in which the person is established or
7 conducts business or, if the person is not established in this
8 state, in Ingham county for an order to enforce compliance with a
9 subpoena or this section. A violation of a final order entered
10 pursuant to this section shall be punished as civil contempt.

11 (4) Upon the petition of the attorney general, the circuit
12 court may enjoin a person from doing business in this state if
13 the person persistently and knowingly evades or prevents
14 compliance with an injunction issued pursuant to this act.

15 Sec. 8. (1) The attorney general shall publish, make
16 available for public inspection and copying during business
17 hours, and distribute by subscription upon the request of any
18 person all of the following:

19 (a) Copies of final judgments rendered under this act
20 provided to the attorney general by clerks of the court pursuant
21 to section 9.

22 (b) Any other matter as required by the administrative
23 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

24 (c) An assurance of discontinuance entered into pursuant to
25 section 5.

26 (2) The attorney general may charge a reasonable fee to cover
27 the expense of copying or distribution.

1 Sec. 9. (1) A prosecuting attorney may conduct an
2 investigation pursuant to this act and may institute and
3 prosecute an action under this act in the same manner as the
4 attorney general.

5 (2) Upon commencement of an action brought pursuant to
6 subsection (1), the clerk of the court shall mail a copy of the
7 complaint to the attorney general, and upon entry of a judgment
8 or decree in the action, the clerk of the court shall mail a copy
9 of the judgment, decree, or order to the attorney general.

10 Sec. 10. (1) When the attorney general or prosecuting
11 attorney commences an action or files a voluntary assurance
12 pursuant to this act, no filing fee is required.

13 (2) A law enforcement officer in the state, if requested by
14 the attorney general or a prosecuting attorney, shall aid and
15 assist in an investigation of an alleged or actual violation of
16 this act.

17 (3) This act does not affect any other cause of action that
18 is available. A city, village, township, or county shall not
19 enact an ordinance or other regulation inconsistent with this
20 act.

21 Sec. 11. (1) The commissioner of the financial institutions
22 bureau may investigate, in the manner set forth in section 6, a
23 state or federally chartered bank, savings and loan association,
24 or credit union, or a regulatory loan licensee that the
25 commissioner believes has engaged, is engaging, or is about to
26 engage in a method, act, or practice that is unlawful under this
27 act.

1 (2) When the commissioner requires the use of the subpoena
2 power provided in this act, an application shall be made to the
3 attorney general, who shall proceed to procure a subpoena on
4 behalf of the commissioner in accordance with section 6.

5 (3) Upon conclusion of an investigation, the commissioner
6 shall provide a full report to the attorney general.