Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 431 and 433 through 441
Sponsor: Senator Dale L. Shugars (Senate Bill 431)
Senator Jim Berryman (Senate Bills 433 and 434)
Senator Mike Rogers (Senate Bills 435, 436, and 437)
Senator Bill Schuette (Senate Bill 438)
Senator Michael J. Bouchard (Senate Bills 439, 440, and 441)
Committee: Financial Services

Date Completed: 5-12-95

SUMMARY OF SENATE BILLS 431 and 433 through 441 as introduced 3-28-95:

Senate Bill 438 would create the "Credit Reform Act" to allow a regulated lender to charge, collect, and receive any rate of interest or finance charge for an extension of credit. Senate Bills 431, 433 through 437, 439, 440, and 441 would amend various acts that regulate lenders and credit transactions to bring them into conformity with Senate Bill 438 by deleting ceilings on interest rates for various types of loans and credit transactions; those bills are tie-barred to Senate Bill 438.

Senate Bill 438

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". The bill, however, 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.

"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 or the Retail Installment Sales Act. "Extension of credit" would mean a loan or credit sale made by a regulated lender.

The bill also specifies that the interest or finance charge to be assessed 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, the Motor Vehicle Sales Finance Act, or the Retail Installment Sales 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 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.
-- 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 beyond the payment's due date.

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, but not limited to, 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. All of these allowed fees and charges would be considered interest.

Prohibitions

Any of the following provisions contained in a written document made in connection with an extension of credit to an individual 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 liquidated damages. (A late payment charge would not be a liquidated damage.)

A regulated lender could not require, as a condition of approving a loan, that the borrower contract for one or more 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 depository institution from contracting to provide one or more financial services offered by the institutions that were not prohibited by Federal law.

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 a 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 actual damages resulting from a violation of the bill or $250, whichever was greater.
-- Recover reasonable attorney fees and the costs in connection with bringing an action under the bill.

A regulated lender would not be liable for a violation of the bill, however, if the lender 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 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 U.S.C. 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.)

Senate Bill 431

The bill would amend the Home Improvement Finance Act to delete the Act's maximum limit on the finance charge (or "time price differential") on a home improvement charge agreement and, instead, provide that a home improvement charge agreement could provide for, and the contractor or holder could then charge, collect, and receive a finance charge as permitted under the Credit Reform Act proposed by Senate Bill 438.

Currently, the Home Improvement Finance Act sets a maximum finance charge of 1.2% of the unpaid balance per month, and specifies that an agreement may further provide that if the interest rate paid at two successive auctions of 26-week U.S. Treasury bills is 8% or more, then, on a home improvement charge sale made after that date, the finance charge cannot exceed 1.375% of the unpaid balance per month.

The bill also would delete the Act's maximum finance charge on a home improvement installment contract and its provision for a delinquency and collection charge on each installment on a home improvement installment contract and, instead, would allow a fee for a late installment payment as permitted by Senate Bill 438.

Currently, the Act specifies that the maximum finance charge included in a home improvement installment contract cannot exceed $8 per $100 annually, and specifies that a contract may further provide that if the interest rate paid at two successive auctions of 26-week U.S. Treasury bills is 8% or more, then the finance charge may be equivalent to 16.5% annually on the unpaid balance. In addition, if the amount of any installment is two times or more the amount of any other installment except the down payment, the amount of the finance charge in respect to the portion of the principal amount financed included in the larger installment cannot exceed the equivalent of 6% per annum simple interest for the period from the due date on which the finance charge begins to accrue to the date of the larger installment. The Act also allows a home improvement installment contract to provide for the payment of a delinquency and collection charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5% of the installment or $5, whichever is less. Only one delinquency and collection charge may be collected on any installment, regardless of the period during which it remained in default.

The bill also would delete a prohibition against signing a home improvement charge agreement that contains blank spaces of items that are essential provisions of the transaction to be filled in after the charge agreement has been signed.

Senate Bill 433

The bill would amend the Savings and Loan Act to delete the Act's maximum limits on credit card arrangements, automobile loans, certain lien-secured loans, and other loan agreements, and, instead, would allow a savings and loan association to charge an interest rate or other charge at a rate and in an amount not greater than permitted by the proposed Credit Reform Act.

Currently, the Savings and Loan Act allows a maximum interest rate of 1.5% per month on a credit card arrangement; 16.5% annually on an installment loan for the purchase of a motor vehicle; and 15% on a loan secured by a lien that is not a first lien against single family residential real property and on a loan of less than $100,000 secured by a lien that is not a first lien against real property other than a single family residence. The Act allows a maximum interest rate of 14.55% annually on all other loans.

Senate Bill 434

The bill would amend Public Act 379 of 1984, which regulates certain credit card transactions, to delete the Act's maximum allowable interest rate on a loan made or credit extended pursuant to a credit card arrangement and, instead, would allow the collection of any interest rate permitted by the proposed Credit Reform Act. Currently, Public Act 379 allows the collection of interest not to exceed 1.5% of the unpaid balance per month.

The bill also specifies that a credit card licensee could require the borrower to pay the fees permitted by the Credit Reform Act, and provides that a licensee who entered into a credit card arrangement that did not comply with or otherwise violated Public Act 379 would be subject to the penalty and remedy provisions of the Credit Reform Act.

Senate Bill 435

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 before December 31, 1997, for the purchase of a motor vehicle.

Senate Bill 436

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.

Senate Bill 437

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.

-- 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".

Senate Bill 439

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 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 by the Credit Reform Act.

Senate Bill 440

The bill would amend the Banking Code to delete the Code's maximum limit on interest and charges for credit card agreements and installment loans, and provide, instead, that a bank could collect interest and charges evidenced by a written agreement as permitted by the proposed Credit Reform Act.

Currently, the Code allows a bank to collect interest of up to 1.5% of the unpaid balance per month on a loan made pursuant to a credit card arrangement or other agreement existing prior to the loan, whereby the bank honors the borrower's draft, pays or agrees to pay the borrower's obligations, purchases the borrower's obligation, or advances money to or for the borrower's account. The Code also limits the discount a bank may charge on a credit card arrangement to 5% of the gross amount of obligations purchased by the bank. The bill would delete this limit and specify that, on credit card arrangements, banks could charge a discount.

The current maximum rates for installment loans are 16.5% annually for a loan for the purchase of a new car, and 12.83% annually on loans made after June 1, 1981; for any other loan repayable in uniform installments, whose term does not exceed 84 months and 32 days, the Code allows a rate of interest of 12.83%. The bill also would delete a provision allowing banks to collect on any installment loan a charge for expenses of $1 for each $50, or fraction thereof, but not in excess of $15.

Senate Bill 441

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.

MCL 445.1102 et al. (S.B. 431)
491.718 (S.B. 433)
493.101 et al. (S.B. 434)
490.1a et al. (S.B. 435)
493.51 et al. (S.B. 436)
492.102 et al. (S.B. 437)
445.852 et al. (S.B. 439)
487.491 (S.B. 440)
493.1 et al. (S.B. 441)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State government. The changes included in these bills would not have an impact on the administrative or regulatory workload of the Financial Institution Bureau of the Department of Commerce. There would be no impact on local governmental units.

Fiscal Analyst: K. Lindquist