



**A SUMMARY OF HOUSE BILL 5435 AS INTRODUCED 11-1-01**

The bill would create a new act, the Consumer Credit Privacy Act. It would prohibit businesses from using certain practices in credit transactions, including transactions made by credit and debit cards and those involving discount cards. The following practices would be regulated under the bill.

- A credit card or debit card transaction made on or after June 1, 2002 (or January 1, 2005 for cash registers or similar devices in use on June 1, 2002) could not print or electronically issue a transaction receipt that contained any part of the expiration date or more than the last five digits of the consumer's account number. (This would not apply if the only receipt issued were a receipt on which the account number or expiration date were handwritten, mechanically imprinted, or photocopied.)

- It would be unlawful for a business to fail to destroy any physical receipts or records of a consumer credit transaction within eight years of the transaction (or after the closing of an open state or federal tax audit commenced within the eight-year period).

- In a consumer credit transaction where a credit card number is required as security for payment, and where the consumer elects not to pay for the transaction with that credit card, a business that had submitted a charge on the customer's account to the credit card company would be required to contact the credit card company and cancel the charge within two business days.

- It would be unlawful for a business to sell or furnish personal information obtained in connection with an application for a discount card or by analysis of the consumer's purchases using the discount card without furnishing the consumer a conspicuous opportunity to prohibit the disclosure of the personal information, and to sell the information if the consumer had elected to prohibit the disclosure. "Personal information" would include the Social Security number, account number, driver license number, identification card number, telephone number, or address of a consumer or the consumer's family. This would apply to sales of information individually or in bulk, for purposes of surveys, marketing, and solicitations. Further, a business could not require a consumer to provide personal information in order to apply for or receive a discount card.

- In a consumer credit transaction where a credit card is used for payment, it would be unlawful to require the consumer to provide personal information that is not required by the credit card issuer to complete the transaction, except that an address or telephone number could be required if necessary for shipping, delivery or installation purposes, or in the case of a special

- order, or if the seller of the goods or services processes credit card transactions by mailing transaction forms to a designated bank card center for settlement.

Enforcement by attorney general. If the attorney general had probable cause to believe that a violation had occurred, he or she could bring an equitable action to restrain the violator by temporary or permanent injunction. The action could be brought in the circuit court of the county in which the violation occurred, or, if the violator was not in the state, in the Ingham County Circuit Court.

Unless waived by the court, the attorney general would have to notify the violator of the intent to bring an action, and the person would have seven business days to cease and desist from the alleged unlawful practice, or to confer with the attorney general.

A prosecuting attorney or law enforcement officer who received notice of an alleged violation of the act would have to immediately notify the attorney general.

A person who knowingly violated the terms of an injunction or court order would have to pay a civil penalty of up to \$5,000 for each violation. In this event, the court issuing the order would retain jurisdiction, the cause would be continued, and the attorney general could petition for recovery of a civil penalty.

Civil fines. In addition to injunctive relief, the court could impose a civil fine of up to \$5,000 for violations of the bill (or up to \$5,000 per day of violation for violations involving the use of cash registers or other devices that print receipts containing more than the last five digits of an account number or the expiration date, or for violations involving the failure to credit a person's account within two business days after the person made payment in another manner).

Assurance of discontinuance. The attorney general could accept an assurance of discontinuance of an unlawful practice from a person alleged to have committed the practice. The assurance would not be an admission of guilt and could not be introduced in any other proceeding. An assurance of discontinuance would have to be in writing and be filed with the court. Such an assurance could include a stipulation for any or all of the following:

- The voluntary payment of the costs of the investigation.
- An amount to be held in escrow pending the outcome of the action.
- An amount for restitution to an aggrieved person.

Ex parte hearing, subpoena. Upon application of the attorney general, an ex parte hearing, and a finding of probable cause that a violation of the bill has occurred or is about to occur, the court could issue a subpoena compelling a person to appear before the attorney general and answer questions under oath. A person issued a subpoena to appear could have an attorney present. The subpoena could compel the person to produce books, records, papers, documents, or things relating to an alleged violation. A subpoena issued under this provision would have to provide at least ten days notice of the person's expected appearance, unless the court shortens that period for good cause.

A notice would have to be served upon a defendant in the same manner as service of process in a civil matter, and would have to contain information pertaining to the subject matter under investigation, the material to be produced, and so forth.

The documentary material obtained by the attorney general under this provision would be confidential records and would not be available for public inspection or copying, and could not be divulged except to other law enforcement officials, in connection with an enforcement action brought under the bill, to the commissioner of the financial institutions bureau (presumably the newly reorganized Office of Insurance and Financial Services), and upon order of the court to a party in a private action brought under the bill. A person who disclosed information in violation of these provisions would be guilty of a misdemeanor and could be fined up to \$2,500, imprisoned for up to one year, or both.

A person upon whom notice is served under these provisions of the bill would be required to comply with the terms of the notice. A person would be subject to a civil penalty of up to \$5,000 for:

- Knowingly without good cause failing to appear when served with a notice.
- Knowingly avoiding, evading, or preventing compliance, in whole or in part, with an investigation, including removing, concealing, destroying, mutilating, altering, or falsifying documentary material in the possession or control of the person.
- Knowingly concealing relevant information.

The attorney general could file a petition in circuit court to enforce compliance with a subpoena or these provisions. A violation of a final order issued under these provisions would be punished as civil contempt. Further, the attorney general could petition the court to enjoin a person from doing business in the state if the person persistently and knowingly evaded or prevented compliance with an injunction issued under the bill.

Publication by attorney general. The attorney general would be required to publish, make available, and distribute by subscription (and could charge a reasonable fee for):

- Copies of final judgements rendered under the bill.
- Any other matter as required by the Administrative Procedures Act.
- An assurance of discontinuance entered into under the bill.

Prosecuting attorney investigations. A prosecuting attorney could conduct an investigation under the bill and could institute and prosecute an action under the bill in the same manner as the attorney general. In actions brought by prosecuting attorneys, the clerk of the circuit court would be required to mail a copy of each complaint and each judgment or decree or order to the attorney general.

Other enforcement provisions. The bill states that there would be no filing fee charged for the attorney general or a prosecuting attorney to bring an action or file a voluntary assurance under the bill.

A law enforcement officer would be required to assist in an investigation of an alleged violation of the bill, if requested by the attorney general or a prosecuting attorney.

The bill specifies that it would not affect any other cause of action that is available. Further, a city, village, township, or county could not enact an ordinance or other regulation that was inconsistent with the bill.

Financial institutions bureau. The bill states that the commissioner of the financial institutions bureau (presumably, the commissioner of the Office of Financial and Insurance Services) could investigate a state or federally chartered bank, savings and loan association, or credit union, or a regulatory loan licensee if the commissioner believes that entity has engaged in one of the unlawful practices under the bill. The commissioner would have to request the attorney general to procure a subpoena if necessary, and the commissioner would provide a full report to the attorney general upon conclusion of an investigation.

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■ 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.