

# HOUSE BILL No. 5435

November 1, 2001, Introduced by Reps. Ruth Johnson, Bishop, DeRossett, Gilbert, Kolb, Sheltroun, Howell, Allen, Richardville, Mortimer, Birkholz, Van Woerkom, Meyer, Woronchak and Middaugh 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 trans-  
7 ferred in exchange for payment made by credit or debit card. The  
8 term includes a consumer transaction where a consumer is required  
9 to provide a credit card as security for payment and payment is

1 made by any means. The term also includes an application for and  
2 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  
8 a book, record, report, memorandum, paper, communication, tabula-  
9 tion, map, chart, photograph, mechanical transcription, or other  
10 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 con-  
19 sumer credit transaction are unlawful:

20 (a) On or after January 1, 2005 if the cash register or  
21 other machine or device that electronically prints the receipt is  
22 in use prior to June 1, 2002, and on or after June 1, 2002 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 con-  
18 sumer, obtained in connection with an application for a discount  
19 card or by analysis of the consumer's purchases using the dis-  
20 count card, to another person, individually or in bulk, for pur-  
21 poses of surveys, marketing, and solicitations, without furnish-  
22 ing the consumer with a conspicuous opportunity to prohibit the  
23 disclosure of the personal information.

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

1 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 dis-  
5 count card by a consumer, or offer or issuance of a discount card  
6 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 per-  
10 sonal information that is not required by the credit card issuer  
11 to complete the credit card transaction, except that the address  
12 or telephone number of the consumer may be required in any of the  
13 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 sec-  
12 tion, the attorney general shall notify the person of his or her  
13 intended action. The person shall have 7 business days to cease  
14 and desist from the alleged unlawful method, act, or practice or  
15 to confer with the attorney general in person, by counsel, or by  
16 other representative. The notice may be given to the person by  
17 first-class mail to his or her usual place of business or, if the  
18 person does not have a usual place of business, to his or her  
19 last known address, or, with respect to a corporation, only to a  
20 resident agent who is designated to receive service of process or  
21 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

1 violation together with any information he or she may have to the  
2 office of the attorney general.

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

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

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

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

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

25 (2) An assurance of discontinuance shall be in writing and  
26 may be filed with the circuit court in the county where the  
27 defendant is established or conducts business or, if the

1 defendant is not established in this state, in Ingham county.  
2 The clerk of the court shall maintain a record of the filings.  
3 Unless rescinded by the parties or voided by a court for good  
4 cause, the assurance may be enforced in the circuit court by the  
5 parties to the assurance. The assurance may be modified by the  
6 parties or by a court for good cause.

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

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

1 10 days before the date of the taking of testimony or  
2 examination, unless for good cause shown the court shortens that  
3 period of time.

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

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

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

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

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

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

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

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



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

8           (a) To other law enforcement officials.

9           (b) In connection with an enforcement action brought pursu-  
10 ant to this act.

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

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

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

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

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

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

1 (b) Knowingly avoids, evades, or prevents compliance, in  
2 whole or in part, with an investigation, including the removal  
3 from any place, concealment, destruction, mutilation, alteration,  
4 or falsification of documentary material in the possession, cus-  
5 tody, or control of a person subject to the notice.

6 (c) Knowingly conceals relevant information.

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

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

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

21 (a) Copies of final judgments rendered under this act pro-  
22 vided to the attorney general by clerks of the court pursuant to  
23 section 9.

24 (b) Any other matter as required by the administrative pro-  
25 cedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

26 (c) An assurance of discontinuance entered into pursuant to  
27 section 5.

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

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

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

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

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

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

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

1 engage in a method, act, or practice that is unlawful under this  
2 act.

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

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