

# HOUSE BILL No. 4353

March 7, 1989, Introduced by Reps. Randall and Emmons and referred to the Committee on Corporations and Finance.

A bill to regulate credit card brokering services; to provide for licensing and fees; to establish duties for state agencies; and to provide for penalties.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. As used in this act:

2       (a) "Commissioner" means the commissioner of the financial  
3 institutions bureau.

4       (b) "Credit card brokering" means the processing of credit  
5 card billings and the distribution of funds.

6       (c) "Licensee" means a person licensed by the commissioner  
7 pursuant to this act.

8       (d) "Person" means an individual, partnership, association,  
9 trust, or corporation.

10       Sec. 2. A person shall not engage in the business of credit  
11 card brokering as a service, for a fee, or for other

1 consideration, without first obtaining a license as provided in  
2 this act.

3       Sec. 3. Except as otherwise provided in this act, this act  
4 shall not apply to the following:

5       (a) State or national banks, state or federal credit unions,  
6 trust companies, state or federal savings and loan associations,  
7 and state or federal stock or mutual savings banks whose princi-  
8 pal office is located in this state and is insured by an agency  
9 of the federal government.

10       (b) A foreign bank agency, as defined by section 5(m) of the  
11 banking code of 1969, Act No. 319 of the Public Acts of 1969,  
12 being section 487.305 of the Michigan Compiled Laws, located in  
13 this state.

14       Sec. 4. An application for a license to engage in the busi-  
15 ness of credit card brokering shall be made in writing and under  
16 oath to the commissioner in a form as he or she may prescribe.  
17 The application shall state the full name and business address of  
18 all of the following:

19       (a) The proprietor, if the applicant is an individual.

20       (b) Every member, if the applicant is a partnership or asso-  
21 ciation, except that if the applicant is a joint stock associa-  
22 tion having 50 or more members, the name and business address  
23 need be given only for the association and each of its officers  
24 and directors.

25       (c) The corporation and each of its officers and directors,  
26 if the applicant is a corporation.

1       Sec. 5. An application for a license shall be accompanied  
2 by an investigation fee of \$500.00. An investigation fee shall  
3 not be refunded.

4       Sec. 6. An application for a license shall be accompanied  
5 by both of the following:

6       (a) Financial statements, reasonably satisfactory to the  
7 commissioner, showing the applicant's net worth exceeds  
8 \$100,000.00.

9       (b) A surety bond issued by a bonding company or insurance  
10 company authorized to do business in this state or an irrevocable  
11 letter of credit, in the principal sum of \$250,000.00 for the  
12 first year of doing business. For each subsequent year the prin-  
13 cipal sum of the bond or letter of credit shall be the average  
14 monthly dollar volume done by the licensee during the preceding  
15 year. The bond or letter of credit shall be in form satisfactory  
16 to the commissioner and shall run to the commissioner for the  
17 benefit of any person who, through transacting business with the  
18 applicant or its agents located in this state, are creditors of  
19 or claimants against the applicant or its agents, to secure the  
20 faithful performance of the obligations of the applicant and the  
21 agents of the applicant with respect to the receipt of money in  
22 connection with credit card brokering. The aggregate liability  
23 of the surety shall not exceed the principal sum of the bond.

24       Sec. 7. Upon the filing of the application, the payment of  
25 the investigation fee, and the approval by the commissioner of  
26 the bond or irrevocable letter of credit delivered pursuant to  
27 section 6, the commissioner shall investigate the financial

1 responsibility, financial and business experience, character and  
2 general fitness of the person and, if he or she considers it  
3 advisable, the general fitness of the person's officers and  
4 directors. If the commissioner finds these factors and qualities  
5 meet the requirements of this act and are such as to reasonably  
6 warrant the belief that the person's business will be conducted  
7 honestly, fairly, equitably, carefully, efficiently, and in a  
8 manner commanding the confidence and trust of the community, the  
9 commissioner shall issue to the person a license to engage in the  
10 business of credit card brokering subject to the provisions of  
11 this act.

12       Sec. 8. A licensee shall act in a fiduciary capacity in the  
13 conducting of activities regulated by this act.

14       Sec. 9. A licensee shall not commingle the funds of the  
15 beneficiary of his or her fiduciary duty with the funds of the  
16 licensee or any other person.

17       Sec. 10. A license shall not be transferable.

18       Sec. 11. A licensee shall pay to the commissioner within 5  
19 days after the issuance of the license, and annually thereafter  
20 on or before March 1 of each year, a license fee of \$500.00.

21       Sec. 12. A licensee shall file with the commissioner annu-  
22 ally on or before March 1 of each year a statement listing the  
23 locations of the offices of the licensee and the names and loca-  
24 tions of the agents authorized by the licensee.

25       Sec. 13. (1) A license shall not be denied, suspended, or  
26 revoked except on not less than 10 days' notice to the applicant  
27 or licensee setting forth in writing the reasons for the denial,

1 suspension, or revocation. Within 5 days after receipt of the  
2 notice, the applicant or licensee may make written demand for a  
3 hearing. The commissioner with reasonable promptness shall hear  
4 and determine the matter as provided by the administrative proce-  
5 dures act of 1969, Act No. 306 of the Public Acts of 1969, being  
6 sections 24.201 to 24.328 of the Michigan Compiled Laws. If the  
7 applicant or licensee considers itself aggrieved by the order of  
8 the commissioner, the applicant or licensee may appeal within 30  
9 days from the date of the order to the circuit court in the  
10 manner provided by Act No. 306 of the Public Acts of 1969 and  
11 shall be entitled to the same judicial review as provided in that  
12 act. If an appeal is taken from an order revoking a license, the  
13 effect of the order may be stayed by the court pending the final  
14 determination of the appeal.

15       (2) The commissioner may make investigations and conduct  
16 hearings as the commissioner considers necessary to determine  
17 whether a licensee or any other person has violated any of the  
18 provisions of this act, or whether a licensee has conducted busi-  
19 ness in a manner as would justify suspension or revocation of its  
20 license.

21       (3) The commissioner may subpoena witnesses and documents,  
22 papers, books, records, and other evidence in a matter over which  
23 the commissioner has jurisdiction, control, or supervision. The  
24 commissioner may administer oaths and affirmations to a person  
25 whose testimony is required.

26       (4) If a person fails to comply with a subpoena issued by  
27 the commissioner or to testify with respect to any matter

1 concerning which the person may be lawfully questioned, the  
2 circuit court for Ingham county, on application of the commis-  
3 sioner, may issue an order requiring the attendance of the person  
4 and the giving of testimony or production of evidence.

5       (5) If, in the opinion of the commissioner, a person or  
6 licensee is engaging in, or has engaged in, or the commissioner  
7 has reasonable cause to believe that the person or licensee is  
8 about to engage in, an unsafe or unsound practice in conjunction  
9 with credit card brokering, to the detriment of the people of the  
10 state, or the commissioner has reasonable cause to believe the  
11 licensee has violated or failed, is violating or failing, or is  
12 about to violate or fail to comply with this act or a rule  
13 promulgated under this act, the commissioner may issue and serve  
14 upon the person or licensee a notice of the charges regarding the  
15 unsafe or unsound practice, violation, or failure to comply. The  
16 notice shall contain a statement of the facts constituting the  
17 alleged unsafe or unsound practice, violation, or failure and  
18 shall fix a time and place at which a hearing will be held to  
19 determine whether an order to cease and desist from the practice,  
20 violation, or failure to comply should issue against the  
21 licensee. The hearing shall be not earlier than 5 days nor later  
22 than 10 days after service of the notice unless an earlier or a  
23 later date is set by the commissioner at the request of the  
24 person or licensee. Unless the person or licensee appears at the  
25 hearing personally or by a duly authorized representative, the  
26 person or licensee shall be considered to have consented to the  
27 issuance of the cease and desist order. If there is such consent

1 or if upon the record made at the hearing the commissioner finds  
2 that an unsafe or unsound practice, violation, or failure to  
3 comply specified in the notice of charges has been established,  
4 the commissioner may issue and serve upon the person or licensee  
5 an order to cease and desist from any practice, violation, or  
6 failure to comply. The order may also require or recommend that  
7 the person or licensee take affirmative action to correct the  
8 conditions resulting from any practice, violation, or failure to  
9 comply.

10 (6) A cease and desist order issued under subsection (5)  
11 shall become effective at the expiration of 5 days after service  
12 of the order upon the licensee, except in the case of an order  
13 issued upon consent which shall become effective at the time  
14 specified in the order, and shall remain in effect and enforce-  
15 able as provided in the order, except to the extent it is stayed,  
16 modified, terminated, or set aside by action of the commissioner  
17 or a reviewing court.

18 Sec. 14. (1) The commissioner at any time may investigate  
19 the business of a licensee done in this state, and may examine  
20 the books, accounts, records, and files used and maintained by a  
21 licensee and require the licensee to furnish additional reports  
22 relating to the licensee's business.

23 (2) The commissioner may accept an annual report and audit  
24 of the affairs of a licensee under this act, if made by a certi-  
25 fied public accountant, instead of the examination provided for  
26 in subsection (1).

1       (3) All fees and expenses provided for in this act shall be  
2 paid into the state treasury and credited to the financial  
3 institutions bureau. Money so credited shall be used only for  
4 the operation of the financial institutions bureau.

5       Sec. 15. The commissioner shall promulgate rules that are  
6 necessary for the enforcement of this act in accordance with the  
7 administrative procedures act of 1969, Act No. 306 of the Public  
8 Acts of 1969, being sections 24.201 to 24.328 of the Michigan  
9 Compiled Laws.

10       Sec. 16. (1) A person who violates section 2, 8, or 9 is  
11 guilty of a felony, punishable by imprisonment for not more than  
12 5 years or a fine of not less than \$5,000.00 or more than  
13 \$10,000.00, or both.

14       (2) Except as provided in subsection (1), a person who vio-  
15 lates this act is guilty of a misdemeanor, punishable by impris-  
16 onment for not more than 90 days or a fine of not less than  
17 \$100.00 or more than \$500.00, or both.

18       (3) Each transaction in violation of this act and each day  
19 that a violation continues shall be a separate offense.