

Legislative Analysis



TERMS OF LOAN AGREEMENTS

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House Bill 5831

Sponsor: Rep. Craig DeRoche

Committee: Commerce

Complete to 5-3-04

A SUMMARY OF HOUSE BILL 5831 AS INTRODUCED 4-29-04

The bill would amend Public Act 326 of 1966, known as the general usury act, to specify that the parties to a loan, land contract, or other extension of credit could agree in writing to any of the following:

- If the obligor (i.e. borrower) fails to pay an installment when it is due, the obligor is required to pay a late payment charge in an amount the parties had agreed to in writing.
- If the obligor pays all or any part of the principal before it is due, the obligor is required to pay a prepayment fee in an amount the parties had agreed to in writing.
- If the obligor fails to pay the unpaid principal balance at maturity, the rate of interest accruing on the unpaid balance is increased to a rate the parties had agreed to in writing.
- If the obligor fails to pay any interest on the unpaid principal balance when due, whether before or after default or maturity, the accrued interest is added to the unpaid principal and the amount added accrues interest. The parties could agree to this at any time, including when credit was extended.

The bill says that, for the purposes of those provisions, a late payment charge, prepayment fee, or increased rate of interest would not constitute a penalty.

These provisions would not apply to the extent that another statute prescribes a lower maximum amount for a charge, fee, or rate of interest.

The bill would strike existing language in the section that currently prohibits, for certain debt agreements, the increase in a rate of interest; that prohibits the charging of a prepayment fee or penalty greater than one percent of the prepayment for a prepayment made within three years after the date of the loan; that prohibits the charging of any prepayment fee or penalty for a prepayment made more than three years after the date of the loan; and that prohibits prepayment at any time.

The bill also would specify that certain provisions regarding interest rates, deposits, and discount points of first-mortgage loans, land leases, and land contracts do not apply to a loan, mortgage, credit sale, or advance described in Section 501(a)(1) of the Title V of the federal Depository Institutions Deregulation and Monetary Control Act of 1980. That federal act, among other things, pre-empts state regulation of interest rates, discount points, finance charges, or other charges on first mortgages.

MCL 438.31c

FISCAL IMPACT:

There may be an increased regulatory burden resulting in additional compliance investigative functions, monitoring and follow-up on complaints. Without additional staff there may be an increase in the time it takes to conduct financial institutions examinations. The increased costs of operation to the State are indeterminate and there is no fiscal impact to local units of government.

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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.