



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 238 (as reported without amendment)  
Sponsor: Senator Darwin L. Booher  
Committee: Banking and Financial Services

Date Completed: 4-19-17

### **RATIONALE**

Merchant referral programs allow banks, credit unions, and other lending institutions to attract business through referrals from local merchants and customers in the institutions' existing client network. Evidently, merchant referral programs are allowed in over 40 states, but in Michigan, by rule, licensees subject to the Regulatory Loan Act are prohibited from paying any person for loan applications or recommendations (R 493.20). Some people believe that this prohibition prevents licensees from working with local businesses and keeps Michigan out of the modern lending marketplace. Therefore, it has been suggested that licensees in the State should be allowed to participate in referral programs.

### **CONTENT**

**The bill would amend the Regulatory Loan Act to prohibit a licensee from paying a person a fee for locating a potential borrower for the licensee or referring a potential borrower to the licensee unless the potential borrower was not charged the fee if he or she entered into the loan with the licensee, and the amount of the fee did not exceed \$500.**

The Act generally prohibits a person from engaging in the business of making loans of money, credit, or goods and charging or receiving on the loan a greater rate of interest or consideration than the lender would be permitted to charge if it were not a licensee under the Act and without first obtaining a license from the Department of Insurance and Financial Services.

The Act also prohibits licensees from engaging in certain conduct, such as advertising, publishing, distributing, or broadcasting a false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, or goods, or discriminating against a person in the extension of credit on the basis of sex or marital status.

In addition, the bill would prohibit a licensee from paying a person a fee for locating a potential borrower for the licensee or introducing or referring a potential borrower to the licensee unless the potential borrower was not directly or indirectly charged for all or any part of the fee if he or she entered into the loan with the licensee, and the amount of the fee did not exceed \$500.

MCL 493.12

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The longstanding prohibition against merchant and customer referrals in Michigan has had a detrimental effect on licensed lending institutions' ability to work with local partners in their

communities. The amendments would encourage local economic development by allowing a licensee to pay a fee to local merchants and others who might refer a borrower to the licensee.

The bill also would provide significant consumer protection by ensuring that the cost of the referral fees would be absorbed by the lender instead of being worked back into the loan and passed on to the borrower.

### **Opposing Argument**

Lifting the ban on merchant and customer referrals could lead to lenders creating exclusive referral arrangements and making a business solely on referrals.

**Response:** The way that the referral program would be structured would prevent lenders from engaging in those types of business practices. The referral fee amount would be capped at \$500 and would be allowed only for the specific type of lending subject to the Regulatory Loan Act.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.