

CREDIT CARD ARRANGEMENTS

Act 379 of 1984

AN ACT to define and regulate certain credit card transactions, agreements, charges, and disclosures; to prescribe the powers and duties of the financial institutions bureau and certain state agencies; to provide for the promulgation of rules; and to provide for fines and penalties.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

The People of the State of Michigan enact:

493.101 Definitions.

Sec. 1. As used in this act:

(a) "Commissioner" means the commissioner of the financial institutions bureau of the department of commerce and authorized representatives of the commissioner.

(b) "Licensee" means a person licensed under this act.

(c) "Person" means an individual, corporation, partnership, association, or other legal entity.

(d) "Credit card arrangement" means an unsecured loan or unsecured extension of credit made to the holder of a credit card or charge card which loan or extension of credit is accessed in connection with a credit card or charge card authorized by this act.

(e) "Credit card" or "charge card" means any card or device issued by a licensee under a credit card arrangement which arrangement gives to a cardholder the privilege of obtaining credit from the card issuer or any other person in purchasing or leasing property or services, obtaining credit or loans, or otherwise.

(f) "Truth in lending act" means title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601 to 1667e.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.102 Credit card arrangement; license required; terms and conditions.

Sec. 2. (1) Except for a person licensed under the consumer financial services act, a person shall not make or negotiate, or offer to make or negotiate, a credit card arrangement unless that person is licensed as provided in this act.

(2) A licensee shall not make or offer to make a credit card arrangement except on the terms and conditions authorized by this act and the rules promulgated under this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1988, Act 165, Eff. Sept. 1, 1988.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.103 Application for license; oath; form; contents; fees; net worth requirements; rules.

Sec. 3. (1) An application for a license under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant; if the applicant is a partnership or association, of each member; and if a corporation, of each officer, director, and stockholder. The commissioner may exempt publicly held corporations from the requirement to provide information regarding stockholders. The application shall include other information the commissioner requires.

(3) At the time of making an application, the applicant shall pay to the commissioner an investigation fee and, at the time of application and annually thereafter, an annual license fee as provided in section 7.

(4) Each application for a license shall be accompanied by financial statements, reasonably satisfactory to the commissioner, showing that the applicant's net worth exceeds \$1,000,000.00. A licensee shall continue to maintain the stated net worth requirement while engaging in credit card arrangements and the commissioner may subsequently adopt rules establishing a higher net worth requirement to assure safe, sound operation of credit card arrangements authorized by this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1992, Act 75, Imd. Eff. June 2, 1992.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

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493.104 Investigation; finding; issuance of license; refusal to issue license; expiration of license.

Sec. 4. (1) Upon the filing of an application and the payment of the required fees, the commissioner shall investigate the facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the applicant's members if the applicant is a partnership or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business shall be operated lawfully, honestly, fairly, and efficiently within the purposes of this act, the commissioner shall issue and deliver to the applicant a license to engage in credit card arrangements.

(2) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 6.

(3) A license expires on December 31 each year.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.105 Duties of commissioner upon refusal to issue license.

Sec. 5. If the commissioner refuses to issue a license, the commissioner shall:

(a) Notify the applicant of the denial and of the applicant's right to request a hearing within 10 days.

(b) If the applicant does not request a hearing, return the sum paid as a license fee.

(c) If the applicant requests a hearing, give notice of the grounds for refusal and hold a hearing on the refusal. Within 60 days after the hearing the commissioner shall file a written decision containing his or her findings and conclusions and serve a copy upon the applicant.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.106 Suspension, revocation, or refusal to renew license; notice; grounds; surrender of license; duration of license; reinstatement or issuance of new license; preexisting lawful contracts.

Sec. 6. (1) The commissioner may suspend, revoke, or refuse to renew a license. The commissioner shall give the licensee 10 days' notice in writing, forwarded by certified mail to the principal place of business of the licensee, stating the contemplated action and in general the reason for that action. The licensee shall also be notified that the contemplated action shall be effective after a reasonable opportunity to be heard, if the commissioner finds that the licensee or an owner, director, officer, member, partner, stockholder, employee, or agent of the licensee has done any of the following:

(a) Made a material misstatement in the application.

(b) Committed fraud, engaged in a dishonest activity, or misrepresented or failed to disclose any material particular of a credit card arrangement transaction to a person entitled to the information.

(c) Failed after 10 days' written notice of default, to pay the annual license fee; or to comply with a demand, ruling, or requirement of the commissioner lawfully made pursuant to this act.

(d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated by the commissioner under this act.

(e) Otherwise demonstrated unworthiness, bad faith, dishonesty, or any other quality indicating that the business of the licensee has not been or may not be conducted honestly, fairly, equitably, and efficiently within the purposes and intent of this act.

(2) The commissioner may suspend, revoke, or refuse to renew a license upon a finding of a fact or condition which, if the fact or condition had existed at the time of the original application for the license, clearly would have warranted the commissioner to refuse to issue the license originally.

(3) A licensee may surrender a license by delivering it to the commissioner with written notice of surrender. A surrender of a license shall not affect the licensee's civil or criminal liability for acts committed before the surrender.

(4) A license remains in force until the date of expiration or until surrendered, revoked, or suspended pursuant to this act. The commissioner may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if the conditions under which the license was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(5) The suspension, revocation, nonrenewal, or surrender of a license shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.107 Investigations and examination of books, accounts, records, and files; electronic data processing not prohibited; establishment of annual fee schedule; fees nonrefundable; penalty; disposition and use of fees and expenses; action for recovery of fees or expenses.

Sec. 7. (1) The commissioner may, at any time, make necessary investigations and examine the books, accounts, records, and files of the licensee. This section shall not be construed to prohibit keeping of records by electronic data processing methods. A licensee shall pay an examination fee for examination of its records conducted by the commissioner as provided by this section. The examination fee shall be invoiced upon the completion of the examination and is due and payable upon receipt of the invoice by the licensee. A licensee is not required to pay more than 1 examination fee in a calendar year.

(2) The commissioner shall annually establish the schedule of fees sufficient to pay the bureau's costs of administering this act. The fees are as follows:

(a) For the investigation of an applicant for a license, not less than \$200.00 or more than \$600.00.

(b) For the application and annual renewal of a license, not less than \$300.00 or more than \$800.00.

(c) For amending a license, not less than \$20.00 or more than \$75.00.

(d) For examination of the licensee, not less than \$40.00 or more than \$70.00 per hour for each examiner involved in an examination. In addition, a licensee shall pay the actual travel and lodging expenses incurred by bureau employees who travel out of Michigan to examine the records of the licensee.

(3) Fees received pursuant to this act are not refundable.

(4) A license renewal fee paid after December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(5) Money received under this act shall be paid into the state treasury to the credit of the financial institutions bureau to be used only for the operation of the financial institutions bureau.

(6) If any fees or expenses provided for under this act are not paid when required, the attorney general may maintain an action against the delinquent licensee for the recovery of the fees or expenses together with interest and costs.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1992, Act 75, Imd. Eff. June 2, 1992.

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493.108 Subpoena of witnesses and evidence; oaths and affirmations; noncompliance; order; contempt.

Sec. 8. (1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence. The court may punish by contempt a person who fails to obey the court's order.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.109 Books, accounts, and records; maintenance, preservation, and availability; audit; cost.

Sec. 9. (1) A licensee shall maintain records relating to all transactions under this act so that the commissioner may enforce full compliance with this act. Books and accounts kept at the licensee's principal place of business shall be made available to the commissioner upon request or the licensee shall pay for an examiner to go to the place where the records are kept.

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(2) The books, accounts, and records of the licensee shall be preserved and kept available for not less than 1 year after making the final entry on any loan recorded in the books, accounts, or records. The commissioner may for reasonable cause order an independent audit of the books and records of a licensee and the cost of the audit shall be an expense of the licensee.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.110 Maximum interest; computation; fee; offer of loan or credit in connection with other accounts, services, or similar agreements; prohibited conditions.

Sec. 10. (1) On a loan made or credit extended pursuant to a credit card arrangement, a licensee may collect interest not to exceed 1.5% of the unpaid balance per month. The interest shall not be precomputed but computed from time to time on the basis of the unpaid balances. In addition to collecting the interest permitted by this subsection, a licensee may assess a fee for the privilege of having a credit card or charge card if the fee is not computed as a percentage of the unpaid balance.

(2) A loan made or credit extended pursuant to a credit card arrangement authorized by this act may be offered in connection with other accounts, services, or other similar agreements not regulated by this act or any other applicable statute. A licensee may offer for sale and finance credit life insurance or credit accident and health insurance as defined in the credit insurance act, Act No. 173 of the Public Acts of 1958, being sections 550.601 to 550.624 of the Michigan Compiled Laws, or any other insurance pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(3) The making of a loan or extension of credit pursuant to a credit card arrangement shall not be conditioned on the requirement that insurance as described in subsection (2) be obtained or that any other goods or services be purchased as a condition of the privilege of obtaining a credit card or charge card.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1987, Act 171, Imd. Eff. Nov. 16, 1987;—Am. 1994, Act 386, Eff. Mar. 30, 1995.

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493.111 Truth in lending act; disclosures, information, and notices; applicability.

Sec. 11. (1) A licensee shall make or give to the consumer the disclosures, information, and notices required by the truth in lending act for a credit card arrangement that is governed by this act.

(2) To the extent that the truth in lending act does not impose duties or obligations upon a person for an account established for personal, household, or family purposes in a credit card arrangement that is governed by this act, the person shall make or give to the consumer disclosures, information, and notices in accordance with the federal truth in lending act with respect to the credit transaction.

(3) The truth in lending act shall apply to a credit transaction for which this act authorizes the collection of charges or interest notwithstanding its inclusion in a class of transactions within this state which, by regulation of the board of governors of the federal reserve system, is exempt from the truth in lending act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.112 Wilful and intentional violation as misdemeanor; conduct barring recovery and entitling consumer to attorney fees and court costs; authorized actions.

Sec. 12. (1) Any licensee who wilfully and intentionally violates this act shall be guilty of a misdemeanor.

(2) Any licensee who enters into a credit card arrangement which does not comply with sections 10 and 11 or who violates section 10 or 11, except as a result of accidental or bona fide error, is barred from the recovery of any interest or other charges, attorney fees, or court costs and the consumer shall be entitled to recover reasonable attorney fees and court costs from the licensee.

(3) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin in accordance with the principal of equity a person who is engaging or is about to engage in a method, act, or practice which violates this act.

(c) Except as limited by subdivision (d), recover actual damages resulting from a violation of this act, or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action. Recovery in class actions shall be limited to actual damages without attorneys' fees and the cost of bringing the action.

(d) If the licensee establishes by a preponderance of the evidence that the failure to comply with sections 10 and 11 or the violation of section 10 or 11 was not wilful and intentional, the amount recovered pursuant to subdivision (c) shall not exceed actual damages.

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493.113 Rules.

Sec. 13. The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, as necessary for the administration and enforcement of this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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493.114 Exemptions; credit card or charge card issued prior to effective date of act.

Sec. 14. (1) A state or national bank, state or federal savings and loan association, state or federal credit union, or a retail seller or other creditor under Act No. 224 of the Public Acts of 1966, being sections 445.851 to 445.873 of the Michigan Compiled Laws, shall not be subject to the provisions of this act except that, to the extent such a lender is authorized by law to use the rate authority provided in this act and uses the rate authority provided in section 10, the lender shall also comply with the other provisions of section 10 and with section 11.

(2) A person holding a credit card or charge card issued prior to the effective date of this act may continue to use the credit card or charge card according to the terms of the contract until modified as permitted under this act and shall continue to be liable for loans or credit extended pursuant to any such contract.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

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