



HOUSE BILL No. 5321

February 8 1994 Introduced by Reps Rhead Randall Gnodtke Middaugh Alley and Kaza and referred to the Committee on Business and Finance

A bill to amend sections 2, 18, 19, 20, 21, 31, and 41 of Act No 27 of the Public Acts of the Extra Session of 1950, entitled as amended

"Motor vehicle sales finance act,"

section 2 as amended by Act No 339 of the Public Acts of 1984, section 18 as amended by Act No 246 of the Public Acts of 1983, and section 20 as amended by Act No 107 of the Public Acts of 1993, being sections 492 102, 492 118, 492 119, 492 120, 492 121, 492 131, and 492 141 of the Michigan Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2, 18, 19, 20, 21, 31, and 41 of Act
2 No 27 of the Public Acts of the Extra Session of 1950, section 2
3 as amended by Act No 339 of the Public Acts of 1984, section 18
4 as amended by Act No 246 of the Public Acts of 1983, and
5 section 20 as amended by Act No 107 of the Public Acts of 1993

1 being sections 492 102, 492 118, 492 119, 492 120, 492 121,
2 492 131 and 492 141 of the Michigan Compiled Laws, are amended
3 to read as follows

4 Sec 2 ~~The following words, terms, and phrases when used~~
5 ~~in this act shall have the meaning ascribed to them in this sec-~~
6 ~~tion, except~~ EXCEPT where the context ~~clearly~~ indicates
7 otherwise, AS USED IN THIS ACT

8 1 "Motor vehicle" means a self-propelled device by which a
9 person or property may be transported upon a public highway
10 Motor vehicle does not include tractors, motorcycles, trailers,
11 semitrailers, ~~buses, trucks,~~ power shovels, road machinery,
12 agricultural machinery, and other machinery not designed primar-
13 ily for highway transportation ~~—~~ but which ~~may~~ incidentally
14 ~~transport~~ TRANSPORTS persons or property on a public highway
15 Motor vehicle also does not include devices ~~which~~ THAT move
16 upon or are guided by a track or travel through the air

17 2 "Person" means an individual partnership association
18 ~~business~~ corporation ~~financial institution, nonprofit corpo-~~
19 ~~ration, common law trust joint stock company, or any other group~~
20 ~~of individuals however organized, and the officers, directors,~~
21 ~~employees, and agents of those persons~~ GOVERNMENTAL ENTITY, OR
22 ANY OTHER LEGAL ENTITY

23 3 "Installment buyer" or "buyer" means a person who buys,
24 hires, or leases a motor vehicle FOR PERSONAL, FAMILY, OR HOUSE-
25 HOLD USE AND NOT FOR COMMERCIAL, BUSINESS, OR AGRICULTURAL USE,
26 under an installment sale contract or a legal successor in
27 interest to that person, and shall continue to designate that

1 person notwithstanding that he or she may have entered into 1 or
2 more extensions, deferments, renewals, or other revisions of the
3 original contract

4 4 "Installment seller or 'seller' means a person engaged
5 in the business of selling, offering for sale, ~~or~~ hiring, or
6 leasing motor vehicles under installment sale contracts or a
7 legal successor in interest to that person As used in this sub-
8 division, "business' does not include an isolated sale

9 5 'Holder" means a person, including a seller, who is cur-
10 rently entitled to the rights of a seller under an installment
11 sale contract

12 6 "Sales finance company means a person engaged as princi-
13 pal, agent, or broker in the business of financing or soliciting
14 the financing of installment sale contracts made between other
15 parties, and includes, but is not limited to, the business of
16 acquiring, investing in, or lending money or credit on the secur-
17 ity of the retail seller's interest in such contracts whether by
18 discount, purchase, or assignment of those contracts, or
19 otherwise The term does not include a person, financial insti-
20 tution, or sales finance company that takes assignments of, or an
21 interest in, an aggregation of installment sale contracts only as
22 security for bona fide commercial loans under which, in the
23 absence of default or other bona fide breach of the loan con-
24 tract, ownership of the contracts remains vested in the assignor
25 and collection of payments on the contracts is made by the
26 assignor, nor a person who purchases installment sale contracts
27 from a sales finance company or a financial institution The

1 term includes a person whether or not licensed under this act,
 2 who as a seller finances installment sale contracts for other
 3 sellers or sales finance companies The term includes a finan-
 4 cial institution

5 7 "Financial ~~institutions~~ INSTITUTION' means a state or
 6 national CHARTERED bank, ~~or~~ A state or federal CHARTERED sav-
 7 ings and loan association, or state or federal CHARTERED credit
 8 union that elects to come under the provisions of this act

9 8 "Retail sale" means the sale of a motor vehicle for use
 10 by the buyer or for the benefit or satisfaction which the buyer
 11 may derive from the use of the motor vehicle by another

12 9 'Installment sale contract or "contract' means a con-
 13 tract for the retail sale of a motor vehicle, or which has a sim-
 14 ilar purpose or effect, under which part or all of the price is
 15 payable in 2 or more scheduled payments subsequent to the making
 16 of the contract, or as to which the obligor undertakes to make 2
 17 or more scheduled payments or deposits that can be used to pay
 18 part or all of the purchase price whether or not the seller has
 19 retained a security interest in the motor vehicle or has taken
 20 collateral security for the buyer's obligation, and includes a
 21 loan, mortgage, conditional sale contract, purchase-money chattel
 22 mortgage, hire-purchase agreement or contract for the bailment
 23 or leasing of a motor vehicle under which the hire-purchaser, the
 24 bailee, or the lessee contracts to pay as compensation a sum sub-
 25 stantially equivalent to or in excess of the value of the motor
 26 vehicle, and any other form of contract ~~which~~ THAT has a
 27 similar purpose or effect The terms do not include a sale or

1 contract for sale upon an open book account in which the seller
2 has not retained or taken a security interest in the motor vehi-
3 cle sold or collateral security for the buyer s obligation, the
4 buyer is not required to pay any sum other than the cash price of
5 the motor vehicle sold in connection with ~~such~~ THE sale or
6 extension of credit, and the buyer is obligated to pay for the
7 motor vehicle in full within 90 days after the time the sale or
8 contract for sale was made These terms also mean and apply to
9 any extension, deferment, renewal, or other revision of an
10 installment sale contract

11 10 "Cash price" means the price measured in dollars at
12 which the seller would in good faith sell to the buyer or to any
13 other buyer under like circumstances, and the buyer would in good
14 faith buy from the seller, the motor vehicle ~~which~~ THAT is the
15 subject matter of the installment sale contract ~~—~~ if the sale
16 were a sale for cash instead of an installment sale

17 11 'Down payment means all partial payments, whether made
18 in cash or otherwise, received by or for the benefit of the
19 seller before or substantially contemporaneous with either the
20 execution of the installment sale contract or the delivery of the
21 goods sold under that contract, whichever occurs later

22 12 Principal amount financed means the unpaid cash price
23 balance after deducting the down payment, adding the cost of any
24 insurance premiums required or obtained as security for or by
25 reason of the sale of a motor vehicle under an installment sale
26 contract, and adding other costs necessary or incidental to the
27 sale of the motor vehicle under ~~such~~ THE contract which the

1 seller contracts to pay on behalf of the buyer and for the amount
2 of which the seller agrees to extend credit to the buyer and for
3 which the buyer contracts voluntarily

4 13 "Finance charge" ~~means the amount of the consideration~~
5 ~~in excess of the cash price which the buyer is required to pay to~~
6 ~~the seller for the credit extended by the seller to the buyer in~~
7 ~~conjunction with the sale of a motor vehicle under an installment~~
8 ~~sale contract or the differential between the cash sale price of~~
9 ~~the motor vehicle and the installment sale price exclusive of~~
10 ~~insurance premium costs and other costs necessary or incidental~~
11 ~~to an installment sale, which are specifically authorized by this~~
12 ~~act to be included in an installment sale contract~~ SHALL HAVE
13 THE SAME MEANING AS IT IS GIVEN IN THE FEDERAL TRUTH-IN-LENDING
14 ACT, TITLE I OF PUBLIC LAW 90-321, 15 U S C 1601 TO 1608 1610
15 TO 1613, 1615, 1631 TO 1635 1637 TO 1638 1640 TO 1647, AND 1661
16 TO 1667e

17 14 Time balance means the sum of the principal amount
18 financed and the finance charge

19 15 "Security interest means a property right in the motor
20 vehicle ~~which~~ THAT is the subject of an installment sale con-
21 tract, if the right is retained to secure performance of an obli-
22 gation of the buyer under that contract and an extension, defer-
23 ment, renewal, or other revision of that contract The term
24 includes a lien or encumbrance against that motor vehicle, a
25 mortgage interest in that motor vehicle, and a reservation of
26 title to that motor vehicle, whether or not expressed to be

1 absolute, if the title is in substance retained ONLY for
2 security ~~only~~

3 16 Collateral security means security, other than a
4 security interest in a motor vehicle ~~which~~ THAT is the subject
5 of an installment sale contract, which is given to secure per-
6 formance of an obligation of the buyer, or of any surety or guar-
7 antor for the buyer, under an installment sale contract or an
8 extension, deferment, renewal, or other revision of that
9 contract The term includes the undertakings of any surety or
10 guarantor for the buyer and any interest in, encumbrance on, or
11 pledge of real or personal property other than the motor vehicle
12 which is the subject of the installment sale contract

13 17 "Administrator" means the commissioner of the financial
14 institutions bureau, DEPARTMENT OF COMMERCE

15 18 "Licensee" means a person issued a license under this
16 act as an installment seller or a sales finance company, which
17 license has not expired or has not been surrendered or revoked,
18 and, in the plural, means ~~any or all persons so~~ A PERSON OR
19 PERSONS licensed under ~~any or all~~ 1 OR BOTH of these 2
20 classifications The term includes financial institution as
21 defined in this section

22 19 "Public sale" means a public sale after advertisement of
23 each motor vehicle in at least 2 successive publications in a
24 newspaper having general circulation in the village, city, or
25 township in which the sale is to be held The advertisement
26 shall disclose the place ~~at which~~ WHERE the motor vehicle is

1 stored and may be inspected, — the date time, and place of the
2 sale — and the make, model, and serial number of the vehicle

3 Sec 18 (a) A seller licensed under ~~the provisions of~~
4 this act may charge, contract for, receive, or collect a finance
5 charge, as defined in this act, on any installment sale contract
6 covering the retail sale of a motor vehicle in this state ~~which~~
7 ~~shall~~ THAT DOES not exceed the RATE PERMITTED BY THE CONSUMER
8 CREDIT REFORM ACT ~~rates indicated for the respective classifi-~~
9 ~~cation of motor vehicles as follows~~

10 Class I ~~New or used motor vehicles designated by the manu-~~
11 ~~facturer by a year model of the same or 1 year prior in which the~~
12 ~~retail sale, then being financed is made, equivalent to 16 5% or~~
13 ~~less per year on the unpaid balance~~

14 Class II ~~New or used motor vehicles of a model designated~~
15 ~~by the manufacturer by a year not more than 2 years prior to the~~
16 ~~year in which the sale is made, equivalent to 19% or less per~~
17 ~~year on the unpaid balance~~

18 Class III ~~New or used motor vehicles of a model designated~~
19 ~~by the manufacturer by a year more than 2 years prior to the year~~
20 ~~in which the sale is made, equivalent to 22% or less per year on~~
21 ~~the unpaid balance~~

22 (b) The finance charge shall be computed on the principal
23 amount financed as determined under section 13(b)6

24 (c) The finance charge shall be computed at the annual rates
25 permitted by subsection (a) on installment sale contracts ~~which~~
26 THAT are payable by installment payments, extending for a period
27 of 1 year On installment sale contracts providing for

1 installment payments ~~—~~ extending for a period which is less
 2 than or greater than 1 year, the finance charge shall be computed
 3 proportionately ~~—when~~ IF an installment sale contract provides
 4 for payment other than in equal successive weekly semimonthly
 5 or monthly installments, the finance charge may be at a rate
 6 ~~—which~~ THAT will provide the same annual percentage rate as is
 7 permitted on monthly payment contracts having due regard for the
 8 schedule of payments in the contract The annual percentage rate
 9 as used in this act shall be in accordance with disclosure
 10 requirements of the FEDERAL truth-in-lending act, TITLE I OF
 11 PUBLIC LAW 90-321, 15 U S C 1601 to 1608, 1610 TO 1613, 1615,
 12 1631 TO 1635 1637 TO 1638, 1640 TO 1647, AND 1661 TO 1667e and
 13 the regulations promulgated under the truth-in-lending act

14 (d) The finance charge may be computed on the basis of a
 15 full month for a fractional month period in excess of 10 days

16 (e) A minimum finance charge of \$15 00 may be charged on an
 17 installment sale contract in which the finance charge when com-
 18 puted at the rates indicated, results in a total charge of less
 19 than \$15 00

20 Sec 19 (a) The holder of an installment sale contract may
 21 extend the scheduled due date, ~~—or~~ defer A payment or payments,
 22 or renew the unpaid time balance of ~~—such~~ THE contract

23 (b) The holder may contract for, receive, and collect a
 24 refinance charge for ~~—such~~ THE extension, deferment, or
 25 renewal ~~—Such~~ THE refinance charge shall not exceed the amount
 26 ascertained under ~~—either of the following methods of computation~~

1 ~~at the respective rates indicated by~~ THE RATES ALLOWED BY
 2 SECTION 18(A)

3 (C) ~~+ In the event~~ IF 1 or more installment payments are
 4 extended or deferred, computing the refinance charge on the
 5 amount of the installment payment or payments or part ~~thereof~~
 6 ~~which~~ OF A PAYMENT THAT is refinanced, for the period of time
 7 for which each payment or part ~~thereof~~ OF A PAYMENT is extended
 8 or deferred, SHALL NOT EXCEED RATES PROVIDED FOR IN SECTION
 9 18(A) ~~at the following rates on contracts originally in the~~
 10 ~~respective classification of motor vehicles set forth in the pre-~~
 11 ~~ceding section of this act~~

12 ~~Class I One per cent per month~~

13 ~~Class II One and one half per cent per month~~

14 ~~Class III Two per cent per month~~

15 ~~Such~~ THE refinance charges may be computed on the basis of
 16 a full month for any fractional month period in excess of 10
 17 days

18 (D) ~~2 In the event~~ IF the unpaid balance of the contract
 19 is refinanced or renewed, ~~computing the~~ A refinance charge MAY
 20 BE ASSESSED on the amount obtained by adding to the unpaid time
 21 balance of the contract ~~,~~ the insurance cost and other costs
 22 incidental to refinancing ~~, by adding~~ AND THE unpaid default
 23 charges ~~, which~~ THAT may be accrued, and by deducting any
 24 rebate ~~which~~ THAT may be due to the buyer for prepayment inci-
 25 dental to refinancing, at the rate of the finance charge
 26 ~~specified~~ PROVIDED FOR in ~~subsection (a) of~~ section 18(A),
 27 ~~and by reclassifying the motor vehicle by its then year model,~~

1 ~~for the term of the renewal contract,~~ but otherwise subject to
 2 the provisions of this act governing computation of the original
 3 finance charge The provisions of this act governing minimum
 4 finance charges and minimum prepayment rebate ~~shall~~ DO not
 5 apply in calculating refinance charges on the contract renewed
 6 under this method of computation

7 (E) ~~(c)~~ The holder of an installment sale contract shall
 8 not include in any contract for refinancing ~~such~~ THE contract
 9 any cash loan to the buyer, nor any credit extended to the buyer
 10 incidental to the purchase of goods or services ~~— Provided~~
 11 ~~further, That the word~~ A loan ~~herein shall~~ UNDER THIS SECTION
 12 DOES not include, nor DOES this act prohibit, a rearrangement of
 13 payments under the installment sale contract by a refinance
 14 transaction involving a restoration of certain installment pay-
 15 ments made under the contract, but the refinance charge on ~~such~~
 16 THE amount restored may not be more than ~~7% per annum, simple~~
 17 ~~interest— And provided further however, That the~~ THAT SPECI-
 18 FIED IN SECTION 18(A) THE holder of ~~such~~ THE contract may
 19 embody in ~~such~~ THE refinance contract the cost of accessories
 20 equipment, and parts for the motor vehicle sold under ~~such~~ THE
 21 contract, and the cost of repairs and services to ~~such~~ THE
 22 motor vehicle including finance charges ~~thereon~~ ON THE
 23 CONTRACT

24 Sec 20 A default charge may be collected on each install-
 25 ment payment of an installment sale contract, including a con-
 26 tract subject to section 41, that is not paid on or before the
 27 due date of the payment The default charge shall not exceed the

1 rate ~~of 2% per month~~ PERMITTED IN THE CONSUMER CREDIT REFORM
 2 ACT on the amount of each payment in arrears The default charge
 3 may be computed on the basis of a full calendar month for any
 4 fractional month period in excess of 10 days Each default
 5 charges may be collected, when earned, during the term of the
 6 contract, or may be accumulated and collected at final maturity
 7 or at the time of final payment under the contract The default
 8 charge shall not be collected on any payment in default because
 9 of an acceleration provision in the contract

10 Sec 21 (1) The buyer, notwithstanding the provisions of
 11 any installment sale contract, ~~shall have the privilege of~~
 12 ~~prepaying~~ MAY PREPAY at any time all or a part of the unpaid
 13 time balance under an installment sale contract

14 (2) Except as provided in section 41, when all of the time
 15 balance is liquidated before maturity by prepayment, refinancing,
 16 or termination by surrender or repossession and resale of the
 17 motor vehicle, the holder of the installment sale contract shall
 18 rebate to the buyer immediately the unearned portion of the
 19 finance charge Rebate may be made in cash or credited to the
 20 amount due on the obligation of the buyer

21 (3) The unearned portion of the finance charge to be rebated
 22 to the buyer shall be ~~at least as great a proportion of the~~
 23 ~~original finance charge as the sum of the periodical time bal-~~
 24 ~~ances, after the date of prepayment, bears to the sum of all the~~
 25 ~~periodical time balances under the schedule of payments in the~~
 26 ~~original contract~~ REBATED BY THE ACTUARIAL METHOD The holder
 27 ~~shall~~ IS not ~~be~~ required to rebate a portion of the unearned

1 finance charge ~~which~~ THAT results in a net minimum finance
 2 charge on the contract less than \$15 00 The holder ~~shall~~ IS
 3 not ~~be~~ required to rebate an unearned finance charge when the
 4 amount due, computed as set forth in this section, is less than
 5 \$1 00

6 Sec 31 (a) A licensee under this act shall not charge,
 7 contract for, collect, or receive from the buyer, directly or
 8 indirectly, any further or other amount for costs, charges, exam-
 9 ination, appraisal, service, brokerage, commission, expense,
 10 interest, discount, fees, fines, penalties, or other thing of
 11 value in connection with the retail sale of a motor vehicle under
 12 an installment sale contract in excess of the cost of insurance
 13 premiums, other costs, the finance charges, refinance charges,
 14 default charges, recording and satisfaction fees court costs,
 15 attorney's fees, and expenses of retaking, repairing and storing
 16 a repossessed motor vehicle which are authorized by ~~the provi-~~
 17 ~~sions of~~ this act

18 (b) A licensee under this act shall not collect any charge
 19 ~~whatsoever~~ in connection with a contemplated sale of a motor
 20 vehicle under an installment sale contract ~~, if such~~ THE con-
 21 tract is not consummated ~~— Provided, however, That nothing con-~~
 22 ~~tained herein shall~~ THIS SUBSECTION DOES NOT affect the legal
 23 status of a deposit paid by a prospective buyer to a seller as a
 24 binder on the contemplated purchase of a motor vehicle

25 ~~(c) No holder, sales finance company or banking institution~~
 26 ~~shall pay or cause to be paid, directly or indirectly, to any~~
 27 ~~installment seller, nor shall any installment seller receive from~~

~~1 any such holder, sales finance company or banking institution, or
2 any other person, any sum of money or other consideration for any
3 purpose, in connection with any installment sale transaction,
4 other than a sum equal to the unpaid time balance reduced by the
5 portion of the finance charge which is unearned at the time an
6 installment sale contract is acquired by such holder, sales
7 finance company or banking institution. Provided, That if the
8 seller prepares the credit information, contract, note, mortgage
9 and application for title, the holder, finance company or banking
10 institution may pay such seller a service fee of not more than 2%
11 on the principal amount financed on all motor vehicles financed
12 under class I of section 18, and not more than 3% on the princi-
13 pal amount financed on all motor vehicles financed under classes
14 II and III of section 18, and an additional amount of not more
15 than 1/12 of the amount so paid to the seller for each month the
16 principal amount is financed in excess of 12 months but for not
17 more than 24 months. Such service fee shall be paid from the
18 finance charge authorized by this act and shall not be charged to
19 the buyer in addition thereto.~~

20 (C) ~~No~~ AN insurance company agent, or broker shall NOT
21 pay or cause to be paid, directly or indirectly, to any install-
22 ment seller, nor shall any installment seller receive from any
23 ~~such~~ insurance company, agent, or broker, any portion of ~~any~~
24 AN insurance premium involved in the retail installment sale of a
25 motor vehicle other than for the benefit of the installment
26 buyer, and all ~~such~~ payments shall be held by the installment
27 seller in trust for the benefit of the installment buyer and

1 shall be paid to ~~such~~ THE installment buyer within 30 days,
 2 unless used in procuring comparable insurance or credited to
 3 matured unpaid installments under the contract as provided in
 4 section 16(F) ~~, subdivision (f) of this act~~

5 (d) Whenever in ~~any~~ AN installment sale contract under
 6 this act the seller or any subsequent holder has charged con-
 7 tracted for, collected, or received from the buyer ~~any~~ prohib-
 8 ited costs or charges in connection with ~~such~~ THE contract, all
 9 the costs and charges in connection with ~~such~~ THE contract
 10 other than for insurance, shall be void and unenforceable and any
 11 amounts paid by the buyer for ~~any~~ such costs and charges, other
 12 than insurance, shall be applied on the principal of ~~such~~ THE
 13 contract

14 Sec 41 Instead of a finance charge computed on the prin-
 15 cipal amount financed as defined in section 2(12), the seller may
 16 charge from time to time a finance charge consisting of interest
 17 on the amount of the unpaid principal balance of the contract
 18 In this event, the transaction ~~shall be~~ IS subject to this act
 19 as modified by the following provisions

20 ~~(a) Finance charge shall mean the estimated amount of con-~~
 21 ~~sideration in excess of the cash price which the buyer will pay~~
 22 ~~in the form of interest assuming that each scheduled payment is~~
 23 ~~made on the date it is due and in the scheduled amount~~

24 ~~(b) The maximum estimated finance charge shall not exceed~~
 25 ~~the maximum dollar amount allowed pursuant to section 18 for con-~~
 26 ~~tracts of the same contractual maturity computed on the actual~~
 27 ~~number of days between installment payments~~

1 (A) ~~(c)~~ The number and amount of installment payments
 2 required to be stated pursuant to section 13 may be estimated for
 3 purposes of this section assuming that each scheduled payment is
 4 made on the date it is due and in the scheduled amount

5 (B) ~~(d)~~ The holder of the contract ~~shall have~~ HAS the
 6 option of deferring interest charges which accrue due to install-
 7 ment payments being received later than the periodic installment
 8 due date The deferred interest charge shall be computed on the
 9 basis of additional interest charges accruing for late install-
 10 ment payments and appropriate interest reductions for installment
 11 payments made before the due date On contracts providing for
 12 equal monthly installments, if the final installment is more than
 13 105% of a previous installment as a result of the deferred inter-
 14 est charges, the installment buyer shall be given the option to
 15 pay the deferred interest charges not less than 25 days after the
 16 date the last installment payment is due

17 (C) ~~(e)~~ If the unpaid time balance is prepaid in full
 18 together with all interest incurred to the date of prepayment,
 19 the balance of the original finance charge shall be canceled and
 20 the provisions of section 21 respecting a refund credit ~~shall~~
 21 ~~not be applicable~~ DO NOT APPLY

22 Section 2 This amendatory act shall not take effect unless
 23 Senate Bill No _____ or House Bill No 5315 (request
 24 no 03591'93***) of the 87th Legislature is enacted into law