

Act No. 166  
Public Acts of 1995  
Approved by the Governor  
October 9, 1995  
Filed with the Secretary of State  
October 9, 1995

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Reps. Randall, Kaza, Kukuk, Rhead, Perricone, Gernaat and Gnodtke

# **ENROLLED HOUSE BILL No. 4621**

AN ACT 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 "An act defining and regulating certain installment sales of motor vehicles; prescribing the conditions under which such sales may be made and regulating the financing thereof; regulating and licensing persons engaged in the business of making or financing such sales; prescribing the form, contents and effect of instruments used in connection with such sales and the financing thereof; prescribing certain rights and obligations of buyers, sellers, persons financing such sales and others; limiting charges in connection with such instruments and fixing maximum interest rates for delinquencies, extensions and loans; regulating insurance in connection with such sales; regulating repossessions, redemptions, resales and deficiency judgments and the rights of parties with respect thereto; authorizing extensions, loans and forbearances related to such sales; authorizing investigations and examinations of persons engaged in the business of making or financing such sales; transferring certain powers and duties with respect to finance companies to the commissioner of the financial institutions bureau; and prescribing penalties," 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:*

Section 1. Sections 2, 18, 19, 20, 21, 31, and 41 of Act No. 27 of the Public Acts of the Extra Session of 1950, 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, are amended to read as follows:

Sec. 2. Except where the context indicates otherwise, as used in this act:

1. "Motor vehicle" means a self-propelled device by which a person or property may be transported upon a public highway. Motor vehicle does not include tractors, motorcycles, trailers, semitrailers, power shovels, road machinery, agricultural machinery, and other machinery not designed primarily for highway transportation but which incidentally

transports persons or property on a public highway. Motor vehicle also does not include devices that move upon or are guided by a track or travel through the air.

2. "Person" means an individual, partnership, association, corporation, governmental entity, or any other legal entity.

3. "Installment buyer" or "buyer" means a person who buys, hires, or leases a motor vehicle for personal, family, or household use and not for commercial, business, or agricultural use, under an installment sale contract or a legal successor in interest to that person, and shall continue to designate that person notwithstanding that he or she may have entered into 1 or more extensions, deferments, renewals, or other revisions of the original contract.

4. "Installment seller" or "seller" means a person engaged in the business of selling, offering for sale, hiring, or leasing motor vehicles under installment sale contracts or a legal successor in interest to that person. As used in this subdivision, "business" does not include an isolated sale.

5. "Holder" means a person, including a seller, who is currently entitled to the rights of a seller under an installment sale contract.

6. "Sales finance company" means a person engaged as principal, agent, or broker in the business of financing or soliciting the financing of installment sale contracts made between other parties, and includes the business of acquiring, investing in, or lending money or credit on the security of the retail seller's interest in such contracts whether by discount, purchase, or assignment of those contracts, or otherwise. The term does not include a person, financial institution, or sales finance company that takes assignments of, or an interest in, an aggregation of installment sale contracts only as security for bona fide commercial loans under which, in the absence of default or other bona fide breach of the loan contract, ownership of the contracts remains vested in the assignor and collection of payments on the contracts is made by the assignor, nor a person who purchases installment sale contracts from a sales finance company or a financial institution. The term includes a person, whether or not licensed under this act, who as a seller finances installment sale contracts for other sellers or sales finance companies. The term includes a financial institution.

7. "Financial institution" means a state or national chartered bank, a state or federal chartered savings and loan association, or state or federal chartered credit union that elects to come under the provisions of this act.

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

9. "Installment sale contract" or "contract" means a contract for the retail sale of a motor vehicle, or which has a similar purpose or effect, under which part or all of the price is payable in 2 or more scheduled payments subsequent to the making of the contract, or as to which the obligor undertakes to make 2 or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in the motor vehicle or has taken collateral security for the buyer's obligation, and includes a loan, mortgage, conditional sale contract, purchase-money chattel mortgage, hire-purchase agreement, or contract for the bailment or leasing of a motor vehicle under which the hire-purchaser, the bailee, or the lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle, and any other form of contract that has a similar purpose or effect. The terms do not include a sale or contract for sale upon an open book account in which the seller has not retained or taken a security interest in the motor vehicle sold or collateral security for the buyer's obligation, the buyer is not required to pay any sum other than the cash price of the motor vehicle sold in connection with the sale or extension of credit, and the buyer is obligated to pay for the motor vehicle in full within 90 days after the time the sale or contract for sale was made. These terms also mean and apply to any extension, deferment, renewal, or other revision of an installment sale contract.

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

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

12. "Principal amount financed" means the unpaid cash price balance after deducting the down payment, adding the cost of any insurance premiums required or obtained as security for or by reason of the sale of a motor vehicle under an installment sale contract, and adding other costs necessary or incidental to the sale of the motor vehicle under the contract which the seller contracts to pay on behalf of the buyer and for the amount of which the seller agrees to extend credit to the buyer and for which the buyer contracts voluntarily.

13. "Finance charge" means that term as defined in section 106 of chapter 1 of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1605.

14. "Time balance" means the sum of the principal amount financed and the finance charge.

15. "Security interest" means a property right in the motor vehicle that is the subject of an installment sale contract, if the right is retained to secure performance of an obligation of the buyer under that contract and an extension,

deferment, renewal, or other revision of that contract. The term includes a lien or encumbrance against that motor vehicle, a mortgage interest in that motor vehicle, and a reservation of title to that motor vehicle, whether or not expressed to be absolute, if the title is in substance retained only for security.

16. "Collateral security" means security, other than a security interest in a motor vehicle that is the subject of an installment sale contract, which is given to secure performance of an obligation of the buyer, or of any surety or guarantor for the buyer, under an installment sale contract or an extension, deferment, renewal, or other revision of that contract. The term includes the undertakings of any surety or guarantor for the buyer and any interest in, encumbrance on, or pledge of real or personal property other than the motor vehicle which is the subject of the installment sale contract.

17. "Administrator" means the commissioner of the financial institutions bureau, department of commerce.

18. "Licensee" means a person issued a license under this act as an installment seller or a sales finance company, which license has not expired or has not been surrendered or revoked, and, in the plural, means a person or persons licensed under 1 or both of these 2 classifications. The term includes financial institution as defined in this section.

19. "Public sale" means a public sale after advertisement of each motor vehicle in at least 2 successive publications in a newspaper having general circulation in the village, city, or township in which the sale is to be held. The advertisement shall disclose the place where the motor vehicle is stored and may be inspected, the date, time, and place of the sale, and the make, model, and serial number of the vehicle.

Sec. 18. (a) A seller licensed under this act may charge, contract for, receive, or collect a finance charge, as defined in this act, on any installment sale contract covering the retail sale of a motor vehicle in this state that does not exceed the rate permitted by the credit reform act.

(b) The finance charge shall be computed on the principal amount financed as determined under section 13(2)(6).

(c) The finance charge shall be computed at the annual rates permitted by subsection (a) on installment sale contracts that are payable by installment payments, extending for a period of 1 year. On installment sale contracts providing for installment payments extending for a period which is less than or greater than 1 year, the finance charge shall be computed proportionately. If an installment sale contract provides for payment other than in equal successive weekly, semimonthly, or monthly installments, the finance charge may be at a rate that will provide the same annual percentage rate as is permitted on monthly payment contracts having due regard for the schedule of payments in the contract. The annual percentage rate as used in this act shall be in accordance with disclosure requirements of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1648, and 1661 to 1667e, and the regulations promulgated under the truth in lending act.

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

(e) A minimum finance charge of \$15.00 may be charged on an installment sale contract in which the finance charge, when computed at the rates indicated, results in a total charge of less than \$15.00.

Sec. 19. (a) The holder of an installment sale contract may extend the scheduled due date, defer a payment or payments, or renew the unpaid time balance of the contract.

(b) The holder may contract for, receive, and collect a refinance charge for the extension, deferment, or renewal. The refinance charge shall not exceed the amount ascertained under the rates allowed by section 18(a).

(c) If 1 or more installment payments are extended or deferred, computing the refinance charge on the amount of the installment payment or payments or part of a payment that is refinanced, for the period of time for which each payment or part of a payment is extended or deferred, shall not exceed rates provided for in section 18(a). The refinance charges may be computed on the basis of a full month for any fractional month period in excess of 10 days.

(d) If the unpaid balance of the contract is refinanced or renewed, a refinance charge may be assessed on the amount obtained by adding to the unpaid time balance of the contract the insurance cost and other costs incidental to refinancing and the unpaid default charges that may be accrued, and by deducting any rebate that may be due to the buyer for prepayment incidental to refinancing, at the rate of the finance charge provided for in section 18(a), but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act governing minimum finance charges and minimum prepayment rebate do not apply in calculating refinance charges on the contract renewed under this method of computation.

(e) The holder of an installment sale contract shall not include in any contract for refinancing the contract any cash loan to the buyer, nor any credit extended to the buyer incidental to the purchase of goods or services. A loan under this section does not include, nor does this act prohibit, a rearrangement of payments under the installment sale contract by a refinance transaction involving a restoration of certain installment payments made under the contract, but the refinance charge on the amount restored may not be more than that specified in section 18(a). The holder of the contract may embody in the refinance contract the cost of accessories, equipment, and parts for the motor vehicle sold under the contract, and the cost of repairs and services to the motor vehicle including finance charges on the contract.

Sec. 20. A default charge may be collected on each installment payment of an installment sale contract, including a contract subject to section 41, that is not paid on or before the due date of the payment. The default charge shall not exceed the rate permitted in the credit reform act on the amount of each payment in arrears. The default charge may be computed on the basis of a full calendar month for any fractional month period in excess of 10 days. Each default charges may be collected, when earned, during the term of the contract, or may be accumulated and collected at final maturity or at the time of final payment under the contract. The default charge shall not be collected on any payment in default because of an acceleration provision in the contract.

Sec. 21. (1) The buyer, notwithstanding the provisions of any installment sale contract, may prepay at any time all or a part of the unpaid time balance under an installment sale contract.

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

(3) The unearned portion of the finance charge to be rebated to the buyer shall be rebated by the actuarial method. The holder is not required to rebate a portion of the unearned finance charge that results in a net minimum finance charge on the contract less than \$15.00. The holder is not required to rebate an unearned finance charge when the amount due, computed as set forth in this section, is less than \$1.00.

Sec. 31. (a) A licensee under this act shall not charge, contract for, collect, or receive from the buyer, directly or indirectly, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties, or other thing of value in connection with the retail sale of a motor vehicle under an installment sale contract in excess of the cost of insurance premiums, other costs, the finance charges, refinance charges, default charges, recording and satisfaction fees, court costs, attorney's fees, and expenses of retaking, repairing, and storing a repossessed motor vehicle which are authorized by this act.

(b) A licensee under this act shall not collect any charge in connection with a contemplated sale of a motor vehicle under an installment sale contract if the contract is not consummated. This subsection does not affect the legal status of a deposit paid by a prospective buyer to a seller as a binder on the contemplated purchase of a motor vehicle.

(c) An insurance company, agent, or broker shall not pay or cause to be paid, directly or indirectly, to any installment seller, nor shall any installment seller receive from any insurance company, agent, or broker, any portion of an insurance premium involved in the retail installment sale of a motor vehicle other than for the benefit of the installment buyer, and all payments shall be held by the installment seller in trust for the benefit of the installment buyer and shall be paid to the installment buyer within 30 days, unless used in procuring comparable insurance or credited to matured unpaid installments under the contract as provided in section 16(f).

(d) Whenever in an installment sale contract under this act the seller or any subsequent holder has charged, contracted for, collected, or received from the buyer prohibited costs or charges in connection with the contract, all the costs and charges in connection with the contract, other than for insurance, shall be void and unenforceable and any amounts paid by the buyer for such costs and charges, other than insurance, shall be applied on the principal of the contract.

(e) If a motor vehicle is covered by an installment sale contract, the buyer shall not transfer equity in that vehicle to another person without the written consent of the holder of the sale contract. The holder of the sale contract may charge a transfer fee of \$25.00.

Sec. 41. Instead of a finance charge computed on the principal amount financed, the seller may charge from time to time a finance charge consisting of interest on the amount of the unpaid principal balance of the contract. In this event, the transaction is subject to this act as modified by the following provisions:

(a) The number and amount of installment payments required to be stated pursuant to section 13 may be estimated for purposes of this section assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(b) The holder of the contract has the option of deferring interest charges which accrue due to installment payments being received later than the periodic installment due date. The deferred interest charge shall be computed on the basis of additional interest charges accruing for late installment payments and appropriate interest reductions for installment payments made before the due date. On contracts providing for equal monthly installments, if the final installment is more than 105% of a previous installment as a result of the deferred interest charges, the installment buyer shall be given the option to pay the deferred interest charges not less than 25 days after the date the last installment payment is due.

(c) If the unpaid time balance is prepaid in full, together with all interest incurred to the date of prepayment, the balance of the original finance charge shall be canceled and the finance charge rebate provisions of section 21 do not apply.

Section 2. This amendatory act shall not take effect unless House Bill No. 4614 of the 88th Legislature is enacted into law.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.