

Act No. 167  
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. Kukuk, Rhead, Perricone and Gernaat

# **ENROLLED HOUSE BILL No. 4622**

AN ACT to amend sections 2, 7, 8, 9, 11, 12, 14, 19, and 23 of Act No. 224 of the Public Acts of 1966, entitled "An act to regulate retail installment sales transactions, agreements, charges and disclosures; and to provide for the enforcement thereof and penalties for violations," section 2 as amended by Act No. 33 of the Public Acts of 1987, section 9 as amended by Act No. 112 of the Public Acts of 1993, and section 14 as amended by Act No. 272 of the Public Acts of 1980, being sections 445.852, 445.857, 445.858, 445.859, 445.861, 445.862, 445.864, 445.869, and 445.873 of the Michigan Compiled Laws; and to add section 21a.

*The People of the State of Michigan enact:*

Section 1. Sections 2, 7, 8, 9, 11, 12, 14, 19, and 23 of Act No. 224 of the Public Acts of 1966, section 2 as amended by Act No. 33 of the Public Acts of 1987, section 9 as amended by Act No. 112 of the Public Acts of 1993, and section 14 as amended by Act No. 272 of the Public Acts of 1980, being sections 445.852, 445.857, 445.858, 445.859, 445.861, 445.862, 445.864, 445.869, and 445.873 of the Michigan Compiled Laws, are amended and section 21a is added to read as follows:

Sec. 2. As used in this act:

(a) "Goods" means all tangible chattels purchased primarily for personal, family, or household use and not for commercial, agricultural, or business use. Goods include chattels that are furnished or used for the modernization, rehabilitation, repair, alteration, improvement, or construction of real property so as to become a severable or nonseverable part of the property, if those chattels are not covered by the home improvement finance act, Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Michigan Compiled Laws. Goods include merchandise certificates or coupons issued by a retail seller that are not redeemable in cash and that are to be used in their face amount instead of cash, in exchange for goods or services sold by the seller. Goods do not include a motor vehicle, money, a thing in action, intangible personal property, or their equivalent.

(b) "Services" means work, labor, advice, counseling, or instruction if purchased primarily for personal, family, or household use and not for commercial or business use. Services do not include any of the following:

(i) Work, labor, advice, counseling, or instruction for which the cost is fixed by law or subject to the approval or disapproval of the United States or this state.

(ii) Educational counseling or instruction provided by an accredited college or university or a primary or secondary school providing education required by the state.

(iii) Counseling or instruction of a kindergarten or nursery school.

(c) "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 any of the following:

(i) A mobile home as that term is defined in section 719a of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.719a of the Michigan Compiled Laws.

(ii) Tractors, motorcycles, trailers and 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.

(d) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished from a retail seller.

(e) "Retail seller" or "seller" means a person regularly and principally engaged in the business of selling goods or services to retail buyers, but does not include the services of a professional person licensed by the state to perform legal or dental services or medical services as a medical doctor or a doctor of osteopathy.

(f) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement that provides for a time price differential and under which the buyer agrees to pay the unpaid balance in 1 or more installments. Retail installment transaction does not include a rental-purchase agreement as defined in section 2 of the rental-purchase agreement act, Act No. 424 of the Public Acts of 1984, being section 445.952 of the Michigan Compiled Laws.

(g) "Retail installment contract" means an instrument entered into in this state evidencing a secured or unsecured retail installment transaction, and includes a chattel mortgage, a security agreement, a conditional sale contract, or a bailment or lease contract if the bailment or lease contract requires the bailee or lessee to pay an amount equal to or greater than the value of the bailed or leased good, and additionally provides that the bailee or lessee shall become, for no additional consideration or for nominal consideration, the owner of the good upon full compliance with the bailment or lease contract. Retail installment contract does not include any of the following:

(i) A rental-purchase agreement as defined in section 2 of the rental-purchase agreement act, Act No. 424 of the Public Acts of 1984.

(ii) A retail charge agreement.

(iii) An instrument evidencing a sale made pursuant to a retail charge agreement.

(h) "Retail charge agreement" means an instrument prescribing the terms of a secured or unsecured retail installment transaction that may be made under the instrument from time to time and under the terms of which a time price differential is to be computed in relation to the buyer's unpaid balance from time to time.

(i) "Time price differential" means the amount a buyer pays or is required to pay for the privilege of purchasing goods or services in installments over a period of time. Time price differential does not include the amount, if any, charged for insurance premiums, delinquency charges, attorney fees, court costs, or official fees, but does include all other charges included in a finance charge as that term is defined in section 106 of chapter I of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1605.

(j) "Cash sale price" means the price of a good or service a retail buyer would pay if he or she paid for the good or service in cash, and that is stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer pursuant to a retail charge agreement for that good or service. The cash sale price may include any taxes and charges for delivery, installation, servicing, repairs, alterations, or improvements.

(k) "Official fees" means fees prescribed by law and charged and paid by the seller or holder for filing, recording, or otherwise perfecting, releasing, or satisfying, a retained title, lien, or other security interest created by a retail installment transaction.

(l) "Time sale price" means the cash sale price of goods or services and the amount, if any, included for official fees, the time price differential, and, if a separate identified charge is made, for insurance.

(m) "Principal balance" means the cash sale price of the goods or services covered by a retail installment contract plus the amounts, if any, included in the cash sale price if a separate identified charge is made and stated in the contract for insurance or official fees, less the amount of the buyer's down payment in money or goods, or both.

(n) "Holder" means the retail seller of goods or services covered by a retail installment contract or retail charge agreement, or his or her assignee.

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

Sec. 7. A retail installment contract may provide for, and the seller or holder may then charge, collect, and receive a time price differential that does not exceed the rate of interest or its equivalent permitted a regulated lender by the credit reform act. The time price differential may be computed on the basis of a full month for a fractional portion of a month in excess of 10 days. A minimum time price differential of not more than \$10.00 may be charged, received, and collected on each contract, whether or not the contract is prepaid.

Sec. 8. (1) Notwithstanding contrary provisions of a retail installment contract, a buyer may prepay in full the unpaid balance of the retail installment contract at any time before its final due date and, if the buyer does so, shall receive a refund credit for the prepayment, except as provided in section 23. The amount of the refund credit shall not be less than the amount that would be refunded using the actuarial method.

(2) A refund credit of less than \$1.00 need not be made.

Sec. 9. The holder of an installment contract or retail charge agreement, or retail charge agreement including a contract subject to section 23, if it so provides, may collect a delinquency and collection charge on each installment in default for a period of more than 10 days. A delinquency and collection charge is not a liquidated damage.

Sec. 11. (a) If, in a retail installment transaction, a retail buyer purchases goods or services from a retail seller from whom he or she has previously purchased goods or services under 1 or more retail installment contracts, and the amounts under the previous contracts have not been fully paid, the subsequent purchases may be included in and consolidated with 1 or more of the previous contracts at the seller's option. Each subsequent purchase shall be a separate retail installment contract under this act, notwithstanding that the purchase may be included in and consolidated with 1 or more previous contracts. All the provisions of this act with respect to retail installment contracts apply to subsequent purchases except as otherwise provided in this section.

(b) In the event of consolidation, if the buyer does not execute a retail installment contract respecting each subsequent purchase as provided in this act, the seller may prepare a written memorandum of each subsequent purchase and the provisions of section 3 do not apply. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum, or otherwise, the memorandum shall contain items (1) to (8) of section 3(d) and the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any. The seller shall deliver to the buyer a copy of the memorandum prior to the due date of the first installment of the consolidated contract.

(c) When subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any 1 of the contracts included in the consolidation, the entire amount of all payments made prior to the subsequent purchases are considered to have been applied to the unpaid time balances of the previous purchases. Each payment after the subsequent purchase made on the consolidated contract shall be considered to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with subsequent purchases, at the seller's option, the subsequent payments may be considered to be allocated as an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. The amount of a down payment on the subsequent purchase shall be allocated in its entirety to the subsequent purchase. This subsection does not apply if the previous and subsequent purchases involve equipment, parts or other goods attached or affixed to goods previously purchased and not fully paid, or to services rendered by the seller at the buyer's request.

(d) (1) The holder of a retail installment contract, upon agreement in writing with the buyer, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable under the contract. A minimum charge of \$1.00 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at the rate permitted a regulated lender by the credit reform act, amounts to less than \$1.00. The agreement may also provide for the buyer's payment of the additional cost to the holder of the contract of premiums for continuing in force until the end of the period of extension or deferral any insurance coverage provided for in the contract. The extension or deferral shall be confirmed in writing by the holder.

(2) The holder of a retail installment contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the refinance charge, but the refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to the refinancing, after the deduction of a refund or credit in an amount equal to that to which the buyer would have been entitled under section 8, if he or she had prepaid in full his or her obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. The refinance charge shall not exceed the rate of interest or its equivalent permitted a regulated lender by the credit reform act. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional premiums paid for insurance and of official fees to the buyer, the amount of the finance charge under the refinancing agreement, the new unpaid time balance, and the new schedule of installment payments.

Sec. 12. (a) A retail charge agreement shall be in writing and signed by the buyer or the authorized representative of the buyer. A copy of an agreement executed on or after March 10, 1967 shall be delivered or mailed to the buyer before the date on which the first payment is due under the agreement. An acknowledgment by the buyer of delivery of a copy of the agreement contained in the body of the agreement shall be in a size equal to at least 10-point boldfaced type and shall appear directly above the buyer's signature or the signature of the authorized representative of the

buyer. An agreement executed on or after March 10, 1967 shall not be signed by the buyer when it contains blank spaces for essential provisions of the transaction. The buyer's acknowledgment of delivery of a copy of an agreement in accordance with this section is presumptive proof, in any action or proceeding, of the delivery and that the agreement, when signed, did not contain a blank space. All retail charge agreements executed on or after March 10, 1967 shall state the maximum amount and rate of the time price differential to be charged and paid pursuant to the agreements. An agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point boldfaced type. "Notice to the buyer—Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

(b) The buyer under the retail charge agreement shall promptly be supplied with a statement if as of the end of a monthly period, which need not be a calendar month, or other regular period agreed upon in writing, there is an unpaid balance under the agreement. The statement shall contain all of the following:

(1) The unpaid balance under the retail charge agreement at the beginning and at the end of the period.

(2) The cash sale price of each purchase by the buyer during the period and, unless a sales slip or a memorandum of each purchase is attached to the statement, the purchase or posting date, a brief description, or identification of each purchase.

(3) The payments made by the buyer and any other credits to the buyer during the period.

(4) The amount, if any, of any time price differential for that period.

(5) A statement that the buyer at any time may pay his or her total unpaid balance or any part of that balance.

(c) A retail charge agreement may provide for, and the seller or holder may then charge, collect, and receive, a time price differential for the privilege of paying in installments under the agreement at a rate not greater than the rate permitted a regulated lender by the credit reform act. The time price differential under this subsection shall be computed on all amounts unpaid under the agreement from month to month, which need not be calendar months, or other regular periods; but if the regular period is other than a monthly period, the time price differential may be computed proportionately. The time price differential may be computed for all unpaid balances within a range of \$10.00 or less on the basis of the median amount within that range if as so computed the time price differential is applied to all unpaid balances within that range. A minimum time price differential of not more than 70 cents per month may be charged, received, and collected.

(d) The time price differential for purchases made under a retail charge agreement shall not be computed or imposed on an amount charged for the sale of goods or services until those goods or services have been delivered to the purchaser of the goods or services. If the time price differential is charged before delivery of the goods or services, the charges applied before the delivery date shall be adjusted upon the request of the purchaser in accordance with chapter 4 of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1666 to 1666j.

(e) A retail charge agreement may also provide for the payment of an attorney's reasonable fee if it is referred for collection to an attorney not a salaried employee of the holder of the retail charge agreement or holder of an unpaid balance under the agreement, and for court costs.

Sec. 14. (1) Any of the following provisions contained in a retail installment contract or retail charge agreement are void and unenforceable:

(a) In the absence of the buyer's default in the performance of any of the buyer's obligations, the holder may accelerate the maturity of a part or all of the amount owing.

(b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given.

(c) The seller or holder or other person acting on the seller's or holder's behalf is given authority to enter upon the buyer's premises unlawfully or to commit a breach of the peace in the repossession of goods.

(d) The buyer waives a right of action against the seller or holder or other person acting on the seller's or holder's behalf, for an illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods.

(e) The buyer executes a power of attorney appointing the seller or holder, or other person acting on the seller's or holder's behalf, as the buyer's agent in collection of payments under the contract or agreement or in the repossession of goods.

(f) The buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

(g) An agreement by the buyer to pay liquidated damages.

(2) A seller shall not deny an application for a retail installment contract or retail charge agreement based in whole or in part upon the geographic location of the residence of the applicant.

(3) Subsection (2) shall not preclude a seller from doing any of the following:

(a) Limiting its retail installment contracts or retail charge agreements to residents of this state or to all counties contiguous to the county in which the business is located, and including that county of location.

(b) Denying an application for a retail installment contract or retail charge agreement, if the store at the location to which the application is made gives equal consideration to all applicants who reside in that store's trade area, with respect to the geographic location of the residence of each applicant. As used in this subdivision, "trade area" includes the places of residence of all regular customers of the store.

(c) Denying an application for a retail installment contract or retail charge agreement if the seller maintains a consistent credit evaluation system within at least 2 contiguous counties, and that system does not take into consideration the geographic location of the residence of an applicant in determining whether the applicant should be granted or denied a retail installment contract or retail charge agreement, and the seller does not grant a retail installment contract or retail charge agreement in any other county.

(d) Researching payment and repayment rates in selected geographic locations for the purpose of detecting causative factors.

(4) Subsection (2) shall not apply to a seller whose annual gross receipts for sales of goods and services within this state are less than \$2,000,000.00.

(5) A retail seller shall not require as a condition of approving the retail installment transaction that the retail buyer contract for 1 or more financial services offered by the retail seller or a particular service provider designated by the retail seller.

(6) Subsection (5) does not preclude a retail seller from offering a combination of 2 or more services under prices or terms that are more favorable to the retail buyer than the prices or terms the services would be offered separately.

Sec. 19. (1) The attorney general, the prosecuting attorney for the county where an alleged violation occurred, or a borrower may bring an action against a retail seller to do 1 or more of the following:

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

(b) Enjoin a retail seller who is engaging or about to engage in a method, act, or practice that is a violation of this act.

(c) Recover \$1,000.00 and actual damages if the alleged violation of this act was committed by a retail seller for a noncredit card arrangement or \$1,500.00 and actual damages if the alleged violation involved any other credit arrangements.

(d) Recover reasonable attorney fees and the costs in connection with bringing an action under this act if the retail seller is found to have violated this act.

(e) In an action brought by the attorney general or a county prosecutor, recover a civil fine of not more than \$10,000.00 if the retail seller is found to have willfully and knowingly violated this act and \$20,000.00 if the retail seller is found to have persistently violated this act.

(2) Except for a violation described in section 12, a retail seller who violates this act in the extension of credit to a borrower or buyer shall not recover any interest or other charges in connection with the extension of credit. The borrower or buyer may recover reasonable attorney fees and court costs for enforcing this subsection or in defending against a cause of action brought by a retail seller who has violated this act.

(3) The attorney general or a borrower may bring a class action on behalf of persons injured by a violation of this act.

Sec. 21a. A retail seller is not liable for a violation of this act if the retail seller has fully complied with the federal truth-in-lending act, Public Law 90-321, 15 U.S.C. 1601 to 1607e and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error. A violation of this act resulting from a bona fide error may be corrected in the same manner as provided for in section 130(b) of the truth-in-lending act, 15 U.S.C. 1640(b). The burden of proving that a violation was an unintentional and bona fide error is on the retail seller.

Sec. 23. Instead of a time price differential computed on the original principal balance, the seller may charge from time to time a time price differential consisting of interest on the amount of the unpaid principal balance of the contract. 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 under section 3 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 that 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 entire principal balance is prepaid in full, together with all interest incurred to the date of prepayment, the balance of the original time price differential shall be canceled and the provisions of section 8 respecting a refund credit shall not be applicable.

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

-----  
Clerk of the House of Representatives.

-----  
Secretary of the Senate.

Approved -----

-----  
Governor.