

SENATE BILL No. 1321

June 24, 2004, Introduced by Senators ALLEN, McMANUS, OLSHOVE, SANBORN, JACOBS, PRUSI and BISHOP and referred to the Committee on Economic Development, Small Business and Regulatory Reform.

A bill to amend 1950 (Ex Sess) PA 27, entitled "Motor vehicle sales finance act," by amending section 2 (MCL 492.102), as amended by 1995 PA 166.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) ~~1.~~ "Motor vehicle" means a self-propelled device ~~by~~
4 ~~which a person~~ **used to transport people** or property ~~may be~~
5 ~~transported upon~~ **on** a public highway, ~~— Motor vehicle but~~
6 does not include tractors, ~~motorcycles,~~ trailers, semitrailers,
7 power shovels, road machinery, agricultural machinery, and other
8 machinery not designed primarily for highway transportation but
9 which incidentally transports ~~persons~~ **people** or property on a
10 public highway. Motor vehicle also does not include ~~devices~~
11 ~~that move upon or are~~ **a device that moves on or is** guided by a

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1 track or ~~travel~~ **travels** through the air.

2 (b) ~~2.~~ "Person" means an individual, partnership,
3 association, corporation, **limited liability company**, governmental
4 entity, or any other legal entity.

5 (c) ~~3.~~ "Installment buyer" or "buyer" means a person who
6 buys, hires, or leases a motor vehicle for personal, family, or
7 household use and not for commercial, business, or agricultural
8 use, under an installment sale contract or a legal successor in
9 interest to that person. ~~, and shall continue to designate~~ **The**
10 **term continues to refer to** that person ~~notwithstanding that~~
11 **even if** he or she ~~may have entered~~ **enters** into 1 or more
12 extensions, deferments, renewals, or other revisions of the
13 original contract.

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

19 (e) ~~5.~~ "Holder" means a **seller or other** person ~~, including~~
20 ~~a seller,~~ who is currently entitled to the rights of a seller
21 under an installment sale contract.

22 (f) ~~6.~~ "Sales finance company" means a person engaged as a
23 principal, agent, or broker in the business of financing or
24 soliciting the financing of installment sale contracts made
25 between other parties, and includes **a person engaged in** the
26 business of acquiring, investing in, or lending money or credit
27 on the security of the retail seller's interest in ~~such~~ **those**

1 contracts whether by discount, purchase, or assignment of those
 2 contracts, or otherwise. **The term includes a licensee or other**
 3 **person who as a seller finances installment sale contracts for**
 4 **other sellers or sales finance companies. The term includes a**
 5 **financial institution.** The term does not include ~~a~~ any of the
 6 following:

7 (i) A person, financial institution, or sales finance company
 8 that takes ~~assignments~~ **an assignment** of ~~,~~ or an interest in
 9 ~~,~~ an aggregation of installment sale contracts only as security
 10 for bona fide commercial loans under which, in the absence of
 11 default or other bona fide breach of the loan contract, ownership
 12 of the contracts remains vested in the assignor and collection of
 13 payments on the contracts is made by the assignor. ~~,~~ ~~nor a~~

14 (ii) A person who purchases installment sale contracts from a
 15 sales finance company or a financial institution. ~~The term~~
 16 ~~includes a person, whether or not licensed under this act, who as~~
 17 ~~a seller finances installment sale contracts for other sellers or~~
 18 ~~sales finance companies. The term includes a financial~~
 19 ~~institution.~~

20 (g) ~~7.~~ "Financial institution" means a ~~state or national~~
 21 ~~chartered~~ bank, ~~a state or federal chartered~~ savings and loan
 22 association, or ~~state or federal chartered~~ credit union
 23 **chartered by a state or the United States** that elects to come
 24 under the provisions of this act.

25 (h) ~~8.~~ "Retail sale" means ~~the~~ a sale of a motor vehicle
 26 for use by ~~the~~ a buyer or for the benefit or satisfaction
 27 ~~which~~ **that** the buyer ~~may derive~~ **derives** from the use of the

1 motor vehicle by another.

2 (i) ~~9.~~ "Installment sale contract" or "contract" means ~~a~~
3 ~~contract~~ **an agreement** for the retail sale of a motor vehicle, or
4 ~~which~~ **that** has a similar purpose or effect, under which part or
5 all of the price is payable in 2 or more scheduled payments
6 subsequent to the making of the contract ~~, or as to~~ **or under**
7 which the obligor undertakes to make 2 or more scheduled payments
8 or deposits that can be used to pay part or all of the purchase
9 price, whether or not the seller has retained a security interest
10 in the motor vehicle or has taken collateral security for the
11 buyer's obligation, and ~~includes~~ **any extension, deferment,**
12 **renewal, or other revision of an agreement described in this**
13 **subdivision. The terms include** a loan, mortgage, conditional
14 sale contract, purchase-money chattel mortgage, hire-purchase
15 agreement, or ~~contract~~ **agreement** for the bailment or leasing of
16 a motor vehicle under which the hire-purchaser, the bailee, or
17 the lessee ~~contracts~~ **agrees** to pay as compensation a sum
18 substantially equivalent to or in excess of the value of the
19 motor vehicle, and any other form of ~~contract~~ **agreement** that
20 has a similar purpose or effect. The terms do not include a sale
21 or contract for sale upon an open book account in which the
22 seller has not retained or taken a security interest in the motor
23 vehicle sold or collateral security for the buyer's obligation,
24 the buyer is not required to pay any sum other than the cash
25 price of the motor vehicle sold in connection with the sale or
26 extension of credit, and the buyer is obligated to pay for the
27 motor vehicle in full within 90 days after the time the sale or

1 contract for sale ~~was~~ **is** made. ~~These terms also mean and~~
2 ~~apply to any extension, deferment, renewal, or other revision of~~
3 ~~an installment sale contract.~~

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

11 (k) ~~11.~~ "Down payment" means all partial payments, whether
12 made in cash or otherwise, received by or for the benefit of the
13 seller before or substantially contemporaneous with either the
14 execution of the installment sale contract or the delivery of the
15 ~~goods~~ **motor vehicle** sold under that contract, whichever occurs
16 later.

17 (l) ~~12.~~ "Principal amount financed" means the unpaid cash
18 price balance after deducting the down payment, adding the cost
19 of any insurance premiums required or obtained as security for or
20 by reason of the sale of a motor vehicle under an installment
21 sale contract, and adding other costs necessary or incidental to
22 the sale of the motor vehicle under the contract ~~which~~ **that** the
23 seller contracts to pay on behalf of the buyer and for the amount
24 of which the seller agrees to extend credit to the buyer and for
25 which the buyer contracts voluntarily.

26 (m) ~~13.~~ "Finance charge" means that term as defined in
27 section 106 of chapter 1 of the truth in lending act, ~~title I of~~

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1 ~~the consumer credit protection act, Public Law 90 321, 15 U.S.C.~~

2 **15 USC** 1605.

3 (n) ~~14.~~ "Time balance" means the sum of the principal
4 amount financed and the finance charge.

5 (o) ~~15.~~ "Security interest" means a property right in ~~the~~
6 a motor vehicle that is the subject of an installment sale
7 contract, if the right is retained to secure performance of an
8 obligation of the buyer under that contract. ~~and an extension,~~
9 ~~deferment, renewal, or other revision of that contract.~~ The term
10 includes a lien or encumbrance against ~~that~~ **the** motor vehicle,
11 a mortgage interest in ~~that~~ **the** motor vehicle, and a
12 reservation of title to ~~that~~ **the** motor vehicle, whether or not
13 expressed to be absolute, if the title is in substance retained
14 only for security.

15 (p) ~~16.~~ "Collateral security" means security, other than a
16 security interest in a motor vehicle that is the subject of an
17 installment sale contract, ~~which~~ **that** is given to secure
18 performance of an obligation of the buyer, or of any surety or
19 guarantor for the buyer, under an installment sale contract. ~~or~~
20 ~~an extension, deferment, renewal, or other revision of that~~
21 ~~contract.~~ The term includes the undertakings of any surety or
22 guarantor for the buyer and any interest in, encumbrance on, or
23 pledge of real or personal property other than the motor vehicle
24 ~~which~~ **that** is the subject of the installment sale contract.

25 (q) ~~17.~~ "Administrator" means the commissioner of the
26 ~~financial institutions bureau, department of commerce~~ **office of**
27 **financial and insurance services, department of <<labor and**

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1 **economic growth>>**.

2 (r) ~~18.~~ "Licensee" means a person issued a license under
3 this act as an installment seller or a sales finance company ~~—~~
4 ~~which~~ **and whose** license has not expired or ~~has not~~ been
5 surrendered or revoked, and ~~—~~ in the plural ~~—~~ means a person
6 or persons licensed under 1 or both of these 2 classifications.
7 The term includes **a** financial institution. ~~as defined in this~~
8 ~~section.~~

9 (s) ~~19.~~ "Public sale" means a public sale after
10 advertisement of each motor vehicle in at least 2 successive
11 publications in a newspaper having general circulation in the
12 village, city, or township in which the sale is to be held. The
13 advertisement shall disclose the place where the motor vehicle is
14 stored and may be inspected, the date, time, and place of the
15 sale, and the make, model, and serial number of the **motor**
16 vehicle.