

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senators Allen, McManus, Olshove, Sanborn, Jacobs, Prusi and Bishop

ENROLLED SENATE BILL No. 1321

AN ACT to amend 1950 (Ex Sess) PA 27, entitled "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," by amending section 2 (MCL 492.102), as amended by 1995 PA 166.

The People of the State of Michigan enact:

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

(a) "Motor vehicle" means a self-propelled device used to transport people or property on a public highway, but does not include tractors, trailers, semitrailers, power shovels, road machinery, agricultural machinery, and other machinery not designed primarily for highway transportation but which incidentally transports people or property on a public highway. Motor vehicle also does not include a device that moves on or is guided by a track or travels through the air.

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

(c) "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. The term continues to refer to that person even if he or she enters into 1 or more extensions, deferments, renewals, or other revisions of the original contract.

(d) "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.

(e) "Holder" means a seller or other person who is currently entitled to the rights of a seller under an installment sale contract.

(f) "Sales finance company" means a person engaged as a principal, agent, or broker in the business of financing or soliciting the financing of installment sale contracts made between other parties, and includes a person engaged in the business of acquiring, investing in, or lending money or credit on the security of the retail seller's interest in those contracts whether by discount, purchase, or assignment of those contracts, or otherwise. The term includes a licensee or other person who as a seller finances installment sale contracts for other sellers or sales finance companies. The term includes a financial institution. The term does not include any of the following:

(i) A person, financial institution, or sales finance company that takes an assignment 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.

(ii) A person who purchases installment sale contracts from a sales finance company or a financial institution.

(g) "Financial institution" means a bank, savings and loan association, or credit union chartered by a state or the United States that elects to come under the provisions of this act.

(h) "Retail sale" means a sale of a motor vehicle for use by a buyer or for the benefit or satisfaction that the buyer derives from the use of the motor vehicle by another.

(i) "Installment sale contract" or "contract" means an agreement for the retail sale of a motor vehicle, or that 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 under 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 any extension, deferment, renewal, or other revision of an agreement described in this subdivision. The terms include a loan, mortgage, conditional sale contract, purchase-money chattel mortgage, hire-purchase agreement, or agreement for the bailment or leasing of a motor vehicle under which the hire-purchaser, the bailee, or the lessee agrees to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle, and any other form of agreement 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 is made.

(j) "Cash price" means the price in dollars at which a seller of a motor vehicle 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.

(k) "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 motor vehicle sold under that contract, whichever occurs later.

(l) "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 that 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.

(m) "Finance charge" means that term as defined in section 106 of chapter 1 of the truth in lending act, 15 USC 1605.

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

(o) "Security interest" means a property right in a 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. The term includes a lien or encumbrance against the motor vehicle, a mortgage interest in the motor vehicle, and a reservation of title to the motor vehicle, whether or not expressed to be absolute, if the title is in substance retained only for security.

(p) "Collateral security" means security, other than a security interest in a motor vehicle that is the subject of an installment sale contract, that 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. 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 that is the subject of the installment sale contract.

(q) "Administrator" means the commissioner of the office of financial and insurance services, department of labor and economic growth.

(r) "Licensee" means a person issued a license under this act as an installment seller or a sales finance company and whose license has not expired or 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 a financial institution.

(s) "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 motor vehicle.

Carol Morey Viventi

Secretary of the Senate

Janey E. Randall

Clerk of the House of Representatives

Approved

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Governor