HOUSE BILL NO. 6191

September 09, 2020, Introduced by Rep. Sheppard and referred to the Committee on Regulatory Reform.

A bill to amend 1950 (Ex Sess) PA 27, entitled

"Motor vehicle sales finance act,"

by amending sections 2, 13, and 18 (MCL 492.102, 492.113, and 492.118), section 2 as amended by 2013 PA 16, section 13 as amended by 2009 PA 231, and section 18 as amended by 2002 PA 699.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

(a) "Administrator" means the director of the department of insurance and financial services.

(b) "Cash price" means the price measured 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 an installment sale contract if the sale were a sale for cash instead of an installment sale.

(c) "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.

(d) "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.

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

(f) "Financial institution" means a state or national chartered bank, a state or federal chartered savings and loan association, or a state or federal chartered credit union.

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

(h) "Installment buyer" or "buyer" means a person that 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.

(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 agreement 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 that agreement. 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 on 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.

(j) "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.

(k) "Licensed financial institution" means a financial institution issued a license under this act.

(*l*) "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 licensed financial institution.

(m) "Motor vehicle" means a self-propelled device by which a person or property may be transported upon a public highway or, subject to subparagraph (*iv*), a recreational vehicle. The term does not include any of the following:

(*i*) A tractor, motorcycle, trailer, semitrailer, or power shovel.

(*ii*) Road machinery, agricultural machinery, or other machinery not designed primarily for highway transportation but that incidentally transports persons or property on a public highway.

(*iii*) A device that moves upon or is guided by a track or travels through the air.

(*iv*) A recreational vehicle that does not have its own motive power; is sold by a person engaged solely in the business of selling, offering for sale, hiring, or leasing recreational vehicles that do not have their own motive power; and is sold pursuant to a retail installment contract or retail charge agreement that meets the requirements of the retail installment sales act, 1966 PA 224, MCL 445.851 to 455.873.

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

(o) "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.

(p) "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~~ **must** 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.

(q) "Recreational vehicle" means a recreational vehicle, as that term is defined in section 49a of the Michigan vehicle code, 1949 PA 300, MCL 257.49a, except a park model trailer as defined in section 38a of the Michigan vehicle code, 1949 PA 300, MCL 257.38a.

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

(s) "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 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 licensed 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 from a licensed financial institution.

(t) "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.

(u) "Subscription service" includes, but is not limited to, autonomous vehicle software programs and updates and navigation and safety services.

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

Sec. 13. (1) An installment sale contract ~~shall~~ **must** include the full names and addresses of all the parties to the contract, the date when signed by the buyer, and a description of the motor vehicle sold that is sufficient for accurate identification.

(2) An installment sale contract ~~shall~~ **must** set forth all of the following separate items in the following order:

(a) The cash price of the motor vehicle. This amount ~~shall~~ **must** include any taxes, the cash price of agreed upon accessories and installation of the accessories, the cash price of any extended warranty or service contract, **the cash price of any subscription service**, and a documentary preparation fee. The documentary preparation fee ~~shall~~ **must** not exceed 5% of the cash price of the motor vehicle or $160.00, whichever is less. Beginning on January 1, 2005, the administrator shall adjust the maximum amount then in effect for the documentary preparation fee described in this subdivision every 2 years to reflect the cumulative percentage change in the ~~consumer price index~~ **Consumer Price Index** for the 2 immediately preceding calendar years, as determined by the administrator. The administrator shall round the adjustment to the nearest $10.00 increment to set the fee every 2 years under this subdivision, but shall carry over and use the absolute value to calculate the next 2-year adjustment. As used in this subdivision, ~~"consumer price index"~~ **"Consumer Price Index"** means the United States ~~consumer price index~~ **Consumer Price Index** for all urban consumers, U.S. city average, as defined and reported by the United States ~~department of labor, bureau of labor statistics.~~ **Department of Labor, Bureau of Labor Statistics**.

(b) The down payment made by the buyer at the time of or before execution of the contract, indicating whether made in cash, represented by the agreed value of a trade-in motor vehicle or other goods, or both. The amount of cash and the value of any trade-in ~~shall~~ **must** be stated separately. A description that is sufficient for identification of any trade-in ~~shall~~ **must** be included.

(c) The unpaid cash price balance ~~, which~~ **that** is the difference between the cash price under subdivision (a) and the down payment under subdivision (b).

(d) The cost of any insurance premium or travel emergency benefits pertaining to the operation of the automobile that the seller agrees to extend credit to the buyer to obtain. The installment sale contract ~~shall~~ **must** set forth the term of the insurance and a concise description of the terms of the insurance policy and the travel emergency benefits. If the precise cost of the insurance is not available at the time the contract is signed, an estimated amount, ascertained from the current published applicable manual of a recognized standard insurance rating bureau, may be set forth in the contract. Within 25 days after making the installment sale contract, the seller shall mail or cause to be mailed to the buyer at his or her address as shown on the contract a certificate or policy of insurance and a statement showing the exact cost of the insurance. Each installment sale contract ~~shall~~ **must** contain the following warning, printed prominently in red ink and in 12-point type or larger, directly preceding the notice provided for in section 12(d), enclosed by a continuous heavy line:

Warning: The insurance afforded hereunder does not cover liability for injury to persons or damage to property of others unless so indicated hereon.

(e) The cost of any guaranteed asset protection waiver that the seller agrees to extend credit to the buyer to obtain. For purposes of this subdivision, all of the following apply:

(*i*) "Guaranteed asset protection waiver" means that term as defined in section 3 of the guaranteed asset protection waiver act, **2009 PA 229, MCL 492.23.**

(*ii*) A guaranteed asset protection waiver may be included as part of, or as an addendum to, an installment sale contract.

(*iii*) An installment seller that offers, sells, or provides guaranteed asset protection waivers to installment buyers in this state must comply with the guaranteed asset protection waiver act, **2009 PA 229, MCL 492.21 to 492.33.**

(*iv*) Any cost to an installment buyer for a guaranteed asset protection waiver entered into in compliance with the truth in lending act, 15 USC 1601 to 1667f, and the regulations promulgated under that act, 12 CFR part 226, must be separately stated and is not considered a finance charge or interest.

(f) Other necessary or incidental costs 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 as authorized under this act. The contract ~~shall~~ **must** contain an itemization of the nature and amount of the costs.

(g) The principal amount financed ~~, which~~ **that** is the total of the amounts described in subdivisions (c), (d), (e), and (f).

(h) The finance charge ~~, which~~ **that** is the consideration in excess of the total of the cash price under subdivision (a), excluding the amounts described in subdivisions (d), (e), and (f).

(i) The time balance ~~, which~~ **that** is the total of the amounts described in subdivisions (g) and (h) and represents the total obligation of the buyer that he or she agrees to pay in 2 or more scheduled payments.

(j) The payment schedule ~~, which shall~~ **that must** include the number of payments, the amount of the payments, and the time of the payments required to liquidate the time balance.

(3) An installment sale contract ~~shall~~ **must** state clearly any collateral security given to secure the buyer's obligation under the contract.

(4) An installment sale contract ~~shall~~ **must** contain a summary notice of the buyer's principal legal rights respecting prepayment of the contract and rebate of the finance charge and reinstatement of the contract in the event of repossession.

(5) An installment sale contract ~~shall~~ **must** contain specific provisions concerning the buyer's liability for default charges, repossession, and sale of the motor vehicle in case of default or other breach of contract, and the seller's or holder's rights concerning any collateral security.

Sec. 18. (1) A seller licensed under this act may charge the buyer a finance charge on any installment sale contract covering the retail sale of a motor vehicle in this state. The finance charge ~~shall~~ **must** not exceed the rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) The seller shall compute the finance charge on the principal amount financed as determined under section ~~13(2)(f).~~**13(2)(g).**

(3) The seller shall compute the finance charge at the annual rates permitted by subsection (1) 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 that is less than or greater than 1 year, the seller shall compute the finance charge 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 considering the schedule of payments in the contract. The seller shall disclose the annual percentage rate of the installment sales contract 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.~~ **USC** 1601 to ~~1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1648, and 1661 to 1667e,~~ **1667f**, and the regulations promulgated under ~~the truth in lending~~ **that** act.

(4) The seller may compute the finance charge on the basis of a full month for a fractional month period in excess of 10 days.

(5) A seller may charge a minimum finance charge of $15.00 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.