

HOUSE BILL NO. 4702

April 22, 2021, Introduced by Reps. Hauck and Witwer 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, 12, 13, and 18 (MCL 492.102, 492.112, 492.113, and 492.118), section 2 as amended by 2013 PA 16, section 12 as amended by 1994 PA 2, section 13 as amended by 2009 PA 231, and section 18 as amended by 2002 PA 699, and by adding section 12a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Administrator" means the director of the department of

1 insurance and financial services.

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

8 (c) "Collateral security" means security, other than a
9 security interest in a motor vehicle that is the subject of an
10 installment sale contract, that is given to secure performance of
11 an obligation of the buyer, or of any surety or guarantor for the
12 buyer, under an installment sale contract. The term includes the
13 undertakings of any surety or guarantor for the buyer and any
14 interest in, encumbrance on, or pledge of real or personal property
15 other than the motor vehicle that is the subject of the installment
16 sale contract.

17 (d) "Down payment" means all partial payments, whether made in
18 cash or otherwise, received by or for the benefit of the seller
19 before or substantially contemporaneous with either the execution
20 of the installment sale contract or the delivery of the motor
21 vehicle sold under that contract, whichever occurs later.

22 (e) "Finance charge" means that term as defined in section ~~106~~
23 **1605** of the truth in lending act, 15 USC 1605.

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

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

1 (h) "Installment buyer" or "buyer" means a person that buys,
2 hires, or leases a motor vehicle for personal, family, or household
3 use, and not for commercial, business, or agricultural use, under
4 an installment sale contract or a legal successor in interest to
5 that person.

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

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

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

8 (l) "Licensee" means a person issued a license under this act
9 as an installment seller or a sales finance company and whose
10 license has not expired or been surrendered or revoked, and in the
11 plural means a person or persons licensed under 1 or both of these
12 2 classifications. The term includes a licensed financial
13 institution.

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

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

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

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

25 (iv) A recreational vehicle that does not have its own motive
26 power; is sold by a person engaged solely in the business of
27 selling, offering for sale, hiring, or leasing recreational
28 vehicles that do not have their own motive power; and is sold
29 pursuant to a retail installment contract or retail charge

1 agreement that meets the requirements of the retail installment
2 sales act, 1966 PA 224, MCL 445.851 to 455.873.

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

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

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

22 (q) "Recreational vehicle" means a recreational vehicle, as
23 that term is defined in section 49a of the Michigan vehicle code,
24 1949 PA 300, MCL 257.49a, except a park model trailer as **that term**
25 **is** defined in section 38a of the Michigan vehicle code, 1949 PA
26 300, MCL 257.38a.

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

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

12 (i) A person, financial institution, or sales finance company
13 that takes an assignment of or an interest in an aggregation of
14 installment sale contracts only as security for bona fide
15 commercial loans under which, in the absence of default or other
16 bona fide breach of the loan contract, ownership of the contracts
17 remains vested in the assignor and collection of payments on the
18 contracts is made by the assignor.

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

21 (t) "Security interest" means a property right in a motor
22 vehicle that is the subject of an installment sale contract, if the
23 right is retained to secure performance of an obligation of the
24 buyer under that contract. The term includes a lien or encumbrance
25 against the motor vehicle, a mortgage interest in the motor
26 vehicle, and a reservation of title to the motor vehicle, whether
27 or not expressed to be absolute, if the title is in substance
28 retained only for security.

29 (u) **"Subscription service" means any technology service**

1 related to the operation of a motor vehicle or the motor vehicle
2 financing that a buyer agrees to purchase, including, but not
3 limited to, autonomous vehicle software programs, navigation
4 services, safety services, and any data updates.

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

7 Sec. 12. (a) An installment sale contract ~~shall~~**must** be in
8 writing, and ~~shall~~**must** contain all of the agreements between the
9 buyer and the seller relating to the installment sale of the motor
10 vehicle sold, and ~~shall~~**must** be signed by both the buyer and the
11 seller.

12 (b) ~~An installment sale contract shall be completed as to all~~
13 **All essential provisions of an installment sale contract must be**
14 **completed** prior to the **buyer** signing ~~of the contract by the buyer~~
15 and **the installment sale contract must** contain ~~such other~~
16 information as the administrator may require.

17 (c) An exact copy of the installment sale contract ~~shall~~**must**
18 be furnished by the seller to the buyer without charge at the time
19 the buyer signs the contract. The buyer's copy of the contract
20 ~~shall~~**must** contain the signature of the seller identical with the
21 signature on the original contract.

22 (d) An installment sale contract ~~shall~~**must** contain the
23 following notice printed prominently and in the form indicated in
24 12-point type or larger directly above the space provided in the
25 contract form for the signature of the buyer:

26 "Notice to buyer. Do not sign this contract in blank. You are
27 entitled to 1 true copy of the contract you sign without charge.
28 Keep it to protect your legal rights."

29 (e) The seller shall obtain from the buyer a written

1 acknowledgment of the delivery of the copy of the contract **and the**
 2 **subscription service disclosure required under section 12a, as**
 3 **applicable.** The acknowledgment ~~shall~~**must** be printed in 12-point
 4 type or larger and, if attached to the contract, it ~~shall~~**must** be
 5 printed below the buyer's signature to the contract and
 6 independently signed.

7 (f) An installment sale contract ~~shall~~**must** provide for
 8 weekly, semi-monthly, or monthly payments of the time balance in
 9 substantially equal periods and amounts. This subdivision does not
 10 apply to installment sale contracts made between an installment
 11 seller and an installment buyer who is an employee of the
 12 installment seller. This subdivision ~~shall~~**does** not ~~be construed to~~
 13 prohibit installment ~~sales~~**sale** contracts that extend the time for
 14 making installment payments for a period of not to exceed 3 months.
 15 This subdivision does not preclude the exceptional installment sale
 16 contract provided for in section 22. ~~of this act.~~

17 **Sec. 12a. (1) A licensee that offers to sell a subscription**
 18 **service to a buyer shall provide to the buyer a subscription**
 19 **service disclosure. The subscription service disclosure must be**
 20 **provided to the buyer prior to any agreement to purchase a**
 21 **subscription service.**

22 (2) A subscription service disclosure must do all of the
 23 following:

24 (a) Clearly and conspicuously disclose, in 12-point type, all
 25 the following:

26 (i) The cost of each subscription service offered.

27 (ii) That the purchase of any subscription service is optional
 28 and the buyer may be able to purchase the subscription service on a
 29 month-to-month or as-needed basis at a lower cost than offered by

1 the licensee.

2 (iii) That if the buyer elects to finance the purchase of a
3 subscription service, the buyer will incur interest charges on the
4 cost of the subscription service at the rate listed in the
5 installment sale contract.

6 (iv) That if the buyer elects to finance the purchase of a
7 subscription service, the buyer may cancel the subscription service
8 at any time. However, cancellation of the subscription service will
9 not result in a reduction of the buyer's installment sale contract
10 payment, but any refund due from the unused portion of the
11 subscription service must be applied to the balance of the buyer's
12 installment sale contract in accordance with the installment sale
13 contract.

14 (b) Clearly and conspicuously provide, in 12-point type, a
15 checkbox for the buyer to indicate his or her agreement to purchase
16 the subscription service.

17 (3) The licensee must obtain from the buyer a signed written
18 acknowledgment of the delivery of the subscription service
19 disclosure.

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

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

26 (a) The cash price of the motor vehicle. This amount ~~shall~~
27 **must** include any taxes, the cash price of agreed upon accessories
28 and installation of the accessories, the cash price of any extended
29 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

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

16
17 Warning: The insurance afforded hereunder does not cover
18 liability for injury to persons or damage to property of
19 others unless so indicated hereon.

20
21 (e) The cost of any guaranteed asset protection waiver that
22 the seller agrees to extend credit to the buyer to obtain. For
23 purposes of this subdivision, all of the following apply:

24 (i) "Guaranteed asset protection waiver" means that term as
25 defined in section 3 of the guaranteed asset protection waiver act,
26 **2009 PA 229, MCL 492.23.**

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

29 (iii) An installment seller that offers, sells, or provides

1 guaranteed asset protection waivers to installment buyers in this
2 state must comply with the guaranteed asset protection waiver act,
3 **2009 PA 229, MCL 492.21 to 492.33.**

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

9 (f) Other necessary or incidental costs that the seller
10 contracts to pay on behalf of the buyer and for the amount of which
11 the seller agrees to extend credit to the buyer as authorized under
12 this act. The contract ~~shall~~**must** contain an itemization of the
13 nature and amount of the costs.

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

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

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

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

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

29 (4) An installment sale contract ~~shall~~**must** contain a summary

1 notice of the buyer's principal legal rights respecting prepayment
 2 of the contract and rebate of the finance charge and reinstatement
 3 of the contract in the event of repossession.

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

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

14 (2) The seller shall compute the finance charge on the
 15 principal amount financed as determined under section
 16 ~~13(2)(f)~~**13(2)(g)**.

17 (3) The seller shall compute the finance charge at the annual
 18 rates permitted by subsection (1) on installment sale contracts
 19 that are payable by installment payments, extending for a period of
 20 1 year. On installment sale contracts providing for installment
 21 payments extending for a period that is less than or greater than 1
 22 year, the seller shall compute the finance charge proportionately.
 23 If an installment sale contract provides for payment other than in
 24 equal successive weekly, semimonthly, or monthly installments, the
 25 finance charge may be at a rate that will provide the same annual
 26 percentage rate as is permitted on monthly payment contracts
 27 considering the schedule of payments in the contract. The seller
 28 shall disclose the annual percentage rate of the installment ~~sales~~
 29 **sale** contract in accordance with disclosure requirements of the

1 truth in lending act, ~~title I of the consumer credit protection~~
2 ~~act, Public Law 90-321, 15 U.S.C. USC 1601 to 1608, 1610 to 1613,~~
3 ~~1615, 1631 to 1635, 1637 to 1648, and 1661 to 1667e, 1667f,~~ and the
4 regulations promulgated under ~~the truth in lending~~ **that** act.

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

7 (5) A seller may charge a minimum finance charge of \$15.00 on
8 an installment sale contract in which the finance charge, when
9 computed at the rates indicated, results in a total charge of less
10 than \$15.00.