

HOME IMPROVEMENT FINANCE ACT Act 332 of 1965

AN ACT to define and regulate home improvement charge agreements and home improvement installment contracts for the modernization, rehabilitation, repair, alteration, or improvement upon or in connection with real property; to prescribe the functions of circuit courts, the attorney general, and prosecuting attorneys; and to provide remedies and penalties.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

The People of the State of Michigan enact:

PART 1

445.1101 Home improvement finance act; short title.

Sec. 101. This act shall be known and may be cited as the "home improvement finance act".

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1102 Definitions.

Sec. 102. As used in this act, except where the context clearly indicates otherwise:

(a) "Banking institution" means a bank, bank and trust company, trust company, savings bank, private bank, or a national banking association, organized and doing business under the provisions of any law of this state, or of any other state of the United States, or under the provisions of any law of the United States of America.

(b) "Cash price" means the cash sales price stated in a home improvement installment contract, or the cash sales price of goods and services that are the subject of a home improvement charge sale, for which the contractor would sell or furnish to the buyer and the buyer would buy or obtain from the contractor the goods and services which are the subject of the contract or home improvement charge sale, if the sale were a sale for cash, instead of a home improvement installment sale or home improvement charge sale, and may include any taxes.

(c) "Collateral" means real or personal property subject to a pledge, security interest, mortgage, encumbrance, judgment, or other lien which secures the performance of an obligation of the buyer, or a surety or guarantor for the buyer, under a home improvement installment contract or any extension, deferment, renewal, or other revision thereof.

(d) "Down payment" means the amounts paid in money and in goods to the home improvement contractor and allowances given by the home improvement contractor to the buyer prior to or contemporaneous with the execution of a home improvement installment contract.

(e) "Finance charge", "credit service charge", "service charge", "time price differential", or a similar term means that amount by which the time sale price exceeds the aggregate of the cash price and the amounts,

(k) "Home improvement contractor" or "contractor" means a person who sells goods and services, or agrees to furnish or render services, to a retail buyer pursuant to a home improvement installment contract, or sells goods and services to a retail buyer pursuant to a home improvement charge agreement, but not in connection with construction of new homes.

(l) "Home improvement installment contract" or "contract" means an agreement covering a home improvement installment sale, whether contained in 1 or more documents, together with any accompanying promissory note or other evidence of indebtedness, pursuant to which the buyer promises to pay in installments all or any part of the time sale price or prices of goods and services, or services. It does not include such an agreement:

(i) Pertaining to real property used for a commercial or business purpose.

(ii) Covering the sale of goods by a person who neither directly nor indirectly performs or arranges to perform any services in connection with the installation of or application of the goods.

(iii) Covering only an appliance designed to be free-standing and not built into and permanently affixed as an integral part of the structure such as a stove, freezer, refrigerator, air conditioner other than one connected with a central heating system, hot water heater, and the like.

(iv) Covering the sale of goods and the furnishing of services or the furnishing of services thereunder for a cash price stated therein of \$300.00 or less.

(v) If the loan is contracted for or obtained directly by the retail buyer from the lending institution, person, or corporation.

(vi) Which is a home improvement charge agreement.

(m) "Home improvement installment sale" or "sale" means the sale of goods and furnishing of services or the furnishing of services by a contractor to a retail buyer pursuant to a home improvement installment contract in which the cash price is stated to be in excess of \$300.00.

(n) "Official fees" means the fees required by law to be paid to the appropriate public officer for obtaining any permit or filing or recording or releasing any judgment, mortgage, or other lien or perfecting any security interest taken or reserved as security in connection with a home improvement installment contract.

(o) "Person" means an individual, partnership, association, business corporation, banking institution, nonprofit corporation, common law trust, joint stock company, or any other group of individuals, however organized.

(p) "Principal amount financed" means the cash price of the goods and services which are the subject matter of the home improvement installment sale minus the amount of the buyer's down payment, plus the amounts, if any, included for insurance and official fees.

(q) "Retail buyer" or "buyer" means a person who buys goods and services, or services from a contractor pursuant to a home improvement installment contract, or goods and services from a contractor pursuant to a home improvement charge agreement.

(r) "Services" means work, labor, and services furnished in connection with the installation or application of goods.

(s) "Time balance" means the sum of the

- (a) The entire agreement of the parties with respect to the goods and services.
- (b) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "home improvement installment contract" and shall appear in at least 10-point bold type.
- (c) A notice in at least 8-point bold type reading as follows: "Notice to buyer: (1) Do not sign this contract before you read it. (2) You are entitled to a completely filled-in copy of this contract. (3) Under the law, you have the right to pay off in advance the full amount due and, under certain conditions, to obtain a partial refund of the finance charge. (4) You may rescind or cancel this contract, not later than 5 p.m. on the business day following the date thereof by giving written notice of rescission to the contractor or his agent at his place of business given in the contract or by mailing the notice or cancellation to the contractor to his place of business given in the contract by depositing a properly addressed certified letter in a United States post office or mail box, but if you rescind after 5 p.m. on the business day following, you are still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction".

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1203 Home improvement installment contract; additional required contents.

Sec. 203. Except as provided in sections 306, 307 and 308, a home improvement installment contract shall contain the following:

- (a) The name and place of business of the contractor, the name and address of the buyer as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.
- (b) The cash price of the goods and services which are the subject matter of the sale.
- (c) The amount of the buyer's down payment, itemizing any allowance given by the contractor, amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
- (d) The unpaid cash balance which is the difference between item (b) and item (c).
- (e) The premium paid for each type of insurance included in the contract for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.
- (f) The amount of official fees, if any.
- (g) The principal amount financed, which is the sum of items (d), (e) and (f).
- (h) The amount of the finance charge expressed in dollars.
- (i) The time balance, which is the sum of items (g) and (h), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.
- (j) The time sale price.
- (k) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in 10-point bold type or typewritten and underlined: This contract is not payable in installments of equal amounts. Followed, if there be but 1 larger installment, by: An installment of \$..... will be due on, or if there be more than 1 larger installment, by: Larger installments will be due as follows: (Insert the amount or amounts of every larger installment and its due date).
- (l) This contract may be rescinded or cancelled by the buyer not later than 5 p.m. on the business day following the date thereof by giving written notice of rescission to the contractor or his agent at his place of business given in this contract or by mailing the notice of cancellation to the contractor to his place of business given in the contract by depositing a properly addressed certified letter in a United States post office or mail box, but if he rescinds after 5 p.m. on the business day following, he is still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.

to the requirements of this section of delivery of a copy of a contract, shall be evidence of such delivery and of compliance with this section in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1204a Home improvement charge agreement generally.

Sec. 204a. (1) On or after the effective date of this section, a contractor may enter into a home improvement charge agreement with a retail buyer. A home improvement charge agreement shall be in writing and dated, and shall be signed by the buyer or the authorized representative of the buyer. A copy of a home improvement charge agreement 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 bold type and shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer. A home improvement charge agreement shall not be signed by the buyer when it contains blank spaces of items which are essential provisions of the transaction to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of the delivery and that the agreement, when signed, did not contain a blank space as provided in this subsection. A home improvement charge agreement shall state the maximum amount and rate of the time price differential to be charged and paid pursuant to the agreement. A home improvement charge agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold 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."

(2) A home improvement charge agreement shall contain substantially the following notice:

"A home improvement charge sale made pursuant to this agreement may be rescinded or canceled by the buyer not later than 5 p.m. on the business day following the date of the sale by giving written notice of rescission to the contractor or an agent of the contractor at his or her place of business given in this agreement or by mailing the notice of cancellation to the contractor to his or her place of business given in the agreement by depositing a properly addressed certified letter in a United States post office or mailbox; but if the buyer rescinds after 5 p.m. on the following business day, the buyer is still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction." The notice required by this subsection shall also be given to the buyer at the time of each purchase under the home improvement charge agreement.

(3) The buyer under a home improvement charge agreement shall promptly be supplied with a statement as of the end of each monthly period, which need not be a calendar month, or other regular period agreed upon in writing, at the end of which there is an unpaid balance greater than \$1.00 under the agreement, which statement shall recite the following:

(a) The unpaid balance under the home improvement charge agreement at the beginning and at the end of the period.

(b) The cash price of each purchase under the home improvement charge agreement by the buyer during the period and

the time price differential on a home improvement charge sale made after that date shall not exceed 1.375% of the unpaid balance per month. 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. A minimum time price differential not in excess of 70 cents per month may be charged, collected, and received.

(2) The time price differential for purchases made under a home improvement 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 part D of title I of the federal consumer credit protection act, 15 U.S.C. 1666 to 1666j.

(3) A change in the rate of the time price differential charged pursuant to a home improvement charge agreement shall not apply to a balance incurred prior to the effective date of the change.

(4) An extension of credit under a home improvement charge agreement shall not be secured by a lien on the buyer's principal residence.

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

History: Add. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1205 Home improvement installment contract; statement as to insurance.

Sec. 205. If the premium paid for group credit life or other insurance is included in the home improvement installment contract and a separate charge is made to the buyer for such insurance, the contract shall state whether the insurance is to be procured by the buyer or the contractor.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1206 Home improvement installment contract and home improvement charge agreement; prohibited provisions.

Sec. 206. (1) A home improvement installment contract or home improvement charge agreement shall not contain any provision by which:

(a) The buyer agrees not to assert against a contractor a claim or defense arising out

indebtedness of the buyer is subject to all the claims and defenses of the buyer arising out of the home improvement installment sale or a home improvement charge sale, but the buyer's recovery shall not exceed the amount paid to the holder thereunder.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1972, Act 193, Eff. Jan. 1, 1973;—Am. 1980, Act 78, Imd. Eff. Apr. 3, 1980;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1208 Repealed. 1972, Act 193, Eff. Jan. 1, 1973.

Compiler's note: The repealed section pertained to assignments of home improvement installment contracts.

445.1209 Home improvement installment contract; provisions as to delinquency and collection charges, court costs and attorney fees.

Sec. 209. A home improvement installment contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5% of such installment or \$5.00, whichever is less. Only 1 such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default. A contract may also provide for the payment of court costs actually incurred and of attorney's fees not exceeding 20% of the amount due and payable under such contract if the attorney is not a salaried employee of the contractor or holder for collection.

History: 1965, Act 332, Eff. Jan. 1, 1966.

PART 3

445.1301 Finance charges.

Sec. 301. (1) The maximum finance charge included in a home improvement installment contract payable in substantially equal successive monthly installments beginning 1 month from the date the finance charge accrues, shall not exceed \$8.00 per \$100.00 per annum. However, on a contract which is entered into before December 31, 1991, and which is entered into after the interest rate paid at 2 successive auctions

445.1302 Division of transaction prohibited.

Sec. 302. A contractor shall not induce or permit a buyer to split up or divide any transaction that otherwise would be a home improvement installment sale or home improvement charge sale for the purpose of qualifying for any exclusion under section 102(j), (l), or (m).

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1303 Payment of contract in full before maturity; refund credit.

Sec. 303. (1) Notwithstanding the provisions of a home improvement installment contract to the contrary, a buyer may pay the contract in full at any time before maturity and in so paying shall receive a refund credit on the contract, except as provided in section 309. Except as provided in subsection (2), the amount of the refund credit shall represent at least as great a proportion of the finance charge, or if the contract has been extended, deferred, or refinanced, of the additional charge therefor, as the sum of the periodical time balance scheduled by the contract to follow the installment date after the day of prepayment bears to the sum of all the periodical time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended

and a buyer may consolidate the new unpaid time balances of 2 or more home improvement installment contracts by providing for a new schedule of consolidated installment payments, and may provide for the acceleration of the consolidated time balance upon a failure of the buyer to pay in full any consolidated installment payment. A contractor may not consolidate 2 or more home improvement installment contracts except to the extent provided in sections 306, 307 and 308.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1306 Add-on sales; optional contract provisions; finance charges, insurance.

Sec. 306. A home improvement installment contract may provide that the contractor may at his option add to the contract subsequent home improvement installment sales made by such contractor to the buyer, and that the total time balance of the goods and services covered by the contract shall be increased by the principal amount financed under the subsequent sale or sales, and that all finance charges and installment payments may

(j) Item (h) less item (i).

(k) The premiums paid for any additional insurance and the cost of official fees in respect of the prior contract or contracts, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.

(l) The total principal amount financed, which is the sum of items (g), (j) and (k).

(m) The amount of the finance charge expressed in dollars.

(n) The consolidated time balance, which is the sum of items (l) and (m), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(o) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in 10-point bold type or typewritten and underlined: This contract ("memorandum") is not payable

445.1402 Statement of payments; furnished by holder, fee.

Sec. 402. At any time after its execution, but not later than 1 year after the last payment thereunder, the holder of a home improvement installment contract, upon written request of the buyer, shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. The statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply each statement to the buyer at a charge not exceeding \$1.00 for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

History: 1965, Act 332, Eff. Jan. 1, 1966.

445.1403 Payment in full; acknowledgment, release of collateral.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1409 Waiver.

Sec. 409. No act, agreement, or statement of a buyer under a home improvement installment contract or home improvement charge agreement constitutes a valid waiver of any provision of this act intended for the benefit or protection of the buyer.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985.

445.1410 Effect of act as to prior contracts.