

**SUBSTITUTE FOR
HOUSE BILL NO. 5460**

A bill to amend 1950 (Ex Sess) PA 27, entitled "Motor vehicle sales finance act," by amending sections 2, 12, 13, 22, and 31 (MCL 492.102, 492.112, 492.113, 492.122, and 492.131), 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 31 as amended by 1995 PA 166.

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
3 insurance and financial services.

4 (b) "Cash price" means the price measured in dollars at which
5 a seller of a motor vehicle would in good faith sell to the buyer
6 or to any other buyer under like circumstances, and the buyer would

1 in good faith buy from the seller, the motor vehicle that is the
2 subject matter of an installment sale contract if the sale were a
3 sale for cash instead of an installment sale.

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

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

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

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

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

26 (h) "Installment buyer" or "buyer" means a person that buys,
27 hires, or leases a motor vehicle for personal, family, or household
28 use, and not for commercial, business, or agricultural use, under
29 an installment sale contract or a legal successor in interest to

1 that person.

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

28 (j) "Installment seller" or "seller" means a person engaged in
29 the business of selling, offering for sale, hiring, or leasing

1 motor vehicles under installment sale contracts or a legal
2 successor in interest to that person. As used in this subdivision,
3 "business" does not include an isolated sale.

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

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

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

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

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

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

23 (iv) A recreational vehicle that does not have its own motive
24 power; is sold by a person engaged solely in the business of
25 selling, offering for sale, hiring, or leasing recreational
26 vehicles that do not have their own motive power; and is sold
27 ~~pursuant to~~ **under** a retail installment contract or retail charge
28 agreement that meets the requirements of the retail installment
29 sales act, 1966 PA 224, MCL 445.851 to ~~455.873~~ **445.873**.

1 (n) "New motor vehicle" means a motor vehicle that is not and
2 has not been a demonstrator, an executive or manufacturer's motor
3 vehicle, a leased motor vehicle, or a used or secondhand motor
4 vehicle.

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

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

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

24 (q) "Recreational vehicle" means a recreational vehicle, as
25 that term is defined in section 49a of the Michigan vehicle code,
26 1949 PA 300, MCL 257.49a, except a park model trailer, as **that term**
27 **is** defined in section 38a of the Michigan vehicle code, 1949 PA
28 300, MCL 257.38a.

29 (r) "Retail sale" means a sale of a motor vehicle for use by a

1 buyer or for the benefit or satisfaction that the buyer may derive
2 from the use of the motor vehicle by another.

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

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

22 (ii) A person ~~who~~ **that** purchases installment sale contracts
23 from a sales finance company or from a licensed financial
24 institution.

25 (t) "Security interest" means a property right in a motor
26 vehicle that is the subject of an installment sale contract, if the
27 right is retained to secure performance of an obligation of the
28 buyer under that contract. ~~The term~~ **Security interest** includes a
29 lien or encumbrance against the motor vehicle, a mortgage interest

1 in the motor vehicle, and a reservation of title to the motor
2 vehicle, whether or not expressed to be absolute, if the title is
3 in substance retained only for security.

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

6 (v) **"Used or secondhand motor vehicle" means a motor vehicle**
7 **to which a certificate of title and license plates have been issued**
8 **and which motor vehicle has been registered for use on the highways**
9 **by a consumer or by a dealer.**

10 Sec. 12. (1) ~~(a)~~—An installment sale contract ~~shall~~**must** be in
11 writing, ~~and shall~~ contain all of the agreements between the buyer
12 and the seller relating to the installment sale of the motor
13 vehicle sold, and ~~shall~~ be signed by both the buyer and the seller.

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

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

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

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

1 (5) ~~(e)~~—The seller shall obtain from the buyer a written
 2 acknowledgment of the delivery of the copy of the contract. The
 3 acknowledgment ~~shall~~**must** be printed in 12-point type or larger
 4 and, if attached to the contract, it ~~shall~~**must** be printed below
 5 the buyer's signature to the contract and independently signed.

6 (6) ~~(f)~~—**Except as otherwise provided in this subsection and**
 7 **section 22, 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~~
 10 **subsection** does not ~~apply~~**do either of the following:**

11 (a) **Apply** to ~~an~~ installment sale ~~contracts~~**contract** made
 12 between ~~an installment~~**a** seller and ~~an installment~~**a** buyer who is
 13 an employee of the ~~installment~~ seller. This ~~subdivision~~ shall not
 14 ~~be construed to prohibit~~

15 (b) **Prohibit an** installment ~~sales~~**contracts** ~~sale~~**contract** that
 16 ~~extend~~**extends** the time for making installment payments for a
 17 period of not to exceed 3 months. This ~~subdivision~~ does not
 18 ~~preclude the exceptional installment sale contract provided for in~~
 19 ~~section 22 of this act.~~

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~~**on**
 28 accessories and installation of the accessories, the cash price of
 29 any extended warranty or service contract, and a documentary

1 preparation fee. The documentary preparation fee ~~shall~~**must** not
2 exceed 5% of the cash price of the motor vehicle or \$160.00,
3 whichever is less. Beginning on January 1, 2005, the administrator
4 shall adjust the maximum amount then in effect for the documentary
5 preparation fee described in this subdivision every 2 years to
6 reflect the cumulative percentage change in the ~~consumer price~~
7 ~~index~~**Consumer Price Index** for the 2 immediately preceding calendar
8 years, as determined by the administrator. The administrator shall
9 round the adjustment to the nearest \$10.00 increment to set the fee
10 every 2 years under this subdivision, but shall carry over and use
11 the absolute value to calculate the next 2-year adjustment. As used
12 in this subdivision, "~~consumer price index~~"**"Consumer Price Index"**
13 means the United States ~~consumer price index~~**Consumer Price Index**
14 for all urban consumers, U.S. city average, as defined and reported
15 by the ~~United States department of labor, bureau of labor~~
16 ~~statistics~~**Bureau of Labor Statistics of the United States**
17 **Department of Labor.**

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

25 (c) The unpaid cash price balance, which is the difference
26 between the cash price under subdivision (a) and the down payment
27 under subdivision (b).

28 (d) The cost of any insurance premium or travel emergency
29 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~~**Not later than** 25 days
 9 after making the installment sale contract, the seller shall mail
 10 or cause to be mailed to the buyer at ~~his or her~~**the buyer's**
 11 address as shown on the contract a certificate or policy of
 12 insurance and a statement showing the exact cost of the insurance.
 13 Each installment sale contract ~~shall~~**must** contain the following
 14 warning, printed prominently in red ink and in 12-point type or
 15 larger, directly preceding the notice provided for in section
 16 ~~12(d),~~**12(4)**, enclosed by a continuous heavy line:

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

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

25 (i) "Guaranteed asset protection waiver" means that term as
 26 defined in section 3 of the guaranteed asset protection waiver act,
 27 **2009 PA 229, MCL 492.23.**

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

1 (iii) An installment seller that offers, sells, or provides
2 guaranteed asset protection waivers to installment buyers in this
3 state must comply with the guaranteed asset protection waiver act,
4 **2009 PA 229, MCL 492.21 to 492.33.**

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

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

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

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

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

24 (j) The payment schedule, which ~~shall~~**must** include the number
25 of payments, the amount of the payments, and the time of the
26 payments required to liquidate the time balance. **If the installment**
27 **sale contract is for a new motor vehicle, the installment sale**
28 **contract must contain the following notice printed prominently in**
29 **12-point type or larger directly below the federal Truth-In-Lending**

1 disclosure box:

2 "Notice: Customer should review the payment schedule to
3 determine if the contract requires payments in equal amounts."

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

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

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

16 Sec. 22. **(1)** An installment sale contract may provide for a
17 series of weekly, semi-monthly or monthly payments in substantially
18 equal periods and amounts, followed by a single larger payment ~~of~~
19 **that satisfies** the unpaid time balance, in which event the
20 installment buyer ~~shall have~~**has** the right to an option, at the
21 time ~~such~~**the** larger payment ~~shall become~~**becomes** due, to make ~~such~~
22 **the larger** payment or to enter into a second contract ~~, which~~
23 ~~contract shall conform~~**that conforms** to all the provisions of this
24 act except that the refinance charge provided for in ~~such~~**the**
25 second contract ~~shall~~**must** not exceed the finance charge rate
26 provided for in the first contract.

27 **(2) An installment sale contract for a new motor vehicle may**
28 **provide for a series of monthly payments in unequal payment**
29 **amounts, if both of the following conditions are met:**

1 (a) The amount of any payment under the installment sale
2 contract does not increase more than 40% from the amount of the
3 first scheduled payment.

4 (b) The amount of each payment under the installment sale
5 contract does not exceed the buyer's maximum payment threshold, as
6 determined by the installment seller or the sales finance company
7 at the time the buyer completes the installment sale contract.

8 Sec. 31. (1) ~~(a)~~—A licensee under this act shall not charge,
9 contract for, collect, or receive from the buyer, directly or
10 indirectly, any further or other amount for costs, charges,
11 examination, appraisal, service, brokerage, commission, expense,
12 interest, discount, fees, fines, penalties, or other thing of value
13 in connection with the retail sale of a motor vehicle under an
14 installment sale contract in excess of the cost of insurance
15 premiums, other costs, the finance charges, refinance charges,
16 default charges, recording and satisfaction fees, court costs,
17 ~~attorney's~~ **attorney** fees, and expenses of retaking, repairing, and
18 storing a repossessed motor vehicle ~~which~~ **that** are authorized ~~by~~
19 **under** this act.

20 (2) ~~(b)~~—A licensee under this act shall not collect any charge
21 in connection with a contemplated sale of a motor vehicle under an
22 installment sale contract if the contract is not consummated. This
23 subsection does not affect the legal status of a deposit paid by a
24 prospective buyer to a seller as a binder on the contemplated
25 purchase of a motor vehicle.

26 (3) A licensee under this act shall not charge either of the
27 following fees related to an installment sale contract that
28 requires payments in unequal amounts under section 22(2):

29 (a) A fee based solely on the fact that the installment sale

1 contract requires payments in unequal amounts instead of payments
2 in equal amounts.

3 (b) A fee related to the prepayment of all of the unpaid time
4 balance under the installment sale contract due to the resale of
5 the motor vehicle.

6 (4) ~~(e)~~—An insurance company, agent, or broker shall not pay
7 or cause to be paid, directly or indirectly, to any installment
8 seller, ~~nor shall any~~ **and an** installment seller **shall not** receive
9 from any insurance company, agent, or broker, any portion of an
10 insurance premium involved in the retail installment sale of a
11 motor vehicle other than for the benefit of the installment buyer,
12 and all payments ~~shall~~ **must** be held by the installment seller in
13 trust for the benefit of the installment buyer and ~~shall~~ **must** be
14 paid to the installment buyer within 30 days, unless used in
15 procuring comparable insurance or credited to matured unpaid
16 installments under the contract as provided in section 16(f).

17 (5) ~~(d)~~—Whenever in an installment sale contract under this
18 act the seller or any subsequent holder has charged, contracted
19 for, collected, or received from the buyer prohibited costs or
20 charges in connection with the contract, all the costs and charges
21 in connection with the contract, other than for insurance, ~~shall be~~
22 **are** void and unenforceable and any amounts paid by the buyer for
23 such costs and charges, other than insurance, ~~shall~~ **must** be applied
24 on the principal of the contract.

25 (6) ~~(e)~~—If a motor vehicle is covered by an installment sale
26 contract, the buyer shall not transfer equity in that vehicle to
27 another person without the written consent of the holder of the
28 sale contract. The holder of the sale contract may charge a
29 transfer fee of \$25.00.