

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, if any, included for insurance premiums and official fees.

(f) "Financing agency" means a person other than a home improvement contractor engaged, directly or indirectly, as principal, agent, or broker in the business of purchasing, acquiring, financing, soliciting, or arranging for the financing or acquisition of home improvement installment contracts or home improvement charge agreements or any obligation in connection therewith. It does not include a person to the extent that the person makes bona fide commercial loans to contractors or financing agencies and takes assignments of, or an interest in, an aggregation of such contracts only as security for such commercial loans under which, in the absence of default or other bona fide breach of the loan contract, ownership of such contracts remains vested in the assignor and collection of payments on such contracts is made by the assignor.

(g) "Goods" means chattels which are furnished or used in the modernization, rehabilitation, repair, alteration, or improvement of real property, but not in the construction of new homes.

(h) "Holder" means a person, including a contractor, currently entitled to the rights of a contractor under a home improvement installment contract or home improvement charge agreement.

(i) "Home improvement charge agreement" or "agreement" means an instrument prescribing the terms of home improvement charge sales, whether secured or unsecured, which may be made under the agreement from time to time and under the terms of which a time price differential is to be computed in relation to the buyer's unpaid balance from time to time.

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

(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 principal amount financed and the finance charge.

(t) "Time sale price" means the total of the cash price of the goods and services or services, the finance charge, and the amounts, if any, included for insurance premiums and official fees.

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

445.1111 Effect of compliance with truth in lending act.

Sec. 111. Compliance with the requirements of the truth in lending act, title I of Public Law 90-321, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1638, 1640 to 1647, and 1661 to 1667e, is compliance with the disclosure provisions of section 203(b), (c), (d), (e), (f), (g), (h), (i), (j), and (k), and section 204a(3).

History: Add. 1969, Act 30, Imd. Eff. July 10, 1969;—Am. 1985, Act 202, Imd. Eff. Dec. 27, 1985;—Am. 1993, Act 97, Imd. Eff. July 13, 1993.

PART 2

445.1201 Home improvement installment contract; date, form.

Sec. 201. A home improvement installment contract shall be dated and in writing and the printed portion thereof shall be in at least 8-point type.

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

445.1202 Home improvement installment contract; contents required.

Sec. 202. A home improvement installment contract shall contain:

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- (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.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computation made in determining the amount to be paid by the buyer. The contract need not make any reference to item (e) or item (f) if a charge for the item is not included in the contract.

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

445.1204 Home improvement installment contract; delivery of copy to buyer; acknowledgment, form.

Sec. 204. The contractor shall deliver to the buyer at the time the contract is executed a copy thereof completed in accordance with the provisions of this act. Until the contractor does so, the buyer shall not be obligated to pay. Any acknowledgment by the buyer of the delivery of a copy of the contract shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming

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, unless a sales slip or a memorandum of each purchase is attached to the statement, the purchase or posting date, a brief description, or identification of each such purchase.

(c) The payments made by the buyer and any other credits to the buyer during the period.

(d) The amount, if any, of any time price differential for that period.

(e) A statement to the effect that the buyer at any time may pay the total unpaid balance or any part of that balance.

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

445.1204b Home improvement charge agreement; time price differential; lien on buyer's principal residence prohibited; attorney's fee.

Sec. 204b. (1) A home improvement charge agreement may provide for, and the contractor or holder may then charge, collect, and receive, a time price differential for the privilege of paying in installments under the agreement, in an amount not to exceed 1.2% of the unpaid balance per month. An agreement may further provide that if the interest rate paid at 2 successive auctions of 26-week United States treasury bills is 8% or more, then on a home improvement charge sale made after that date the time price differential shall not exceed 1.375% of the unpaid balance per month, but if the interest rate paid at 2 successive auctions of 26-week United States treasury bills falls below 8%, then the time price differential on a home improvement charge sale made after that date shall not exceed 1.2% of the unpaid balance per month, unless the interest rate paid at 2 successive auctions of 26-week United States treasury bills again is 8% or more, in which case

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 of the home improvement installment sale or a home improvement charge sale or agrees not to assert against an assignee such a claim or defense.

(b) In the absence of the buyer's default in the performance of any of the buyer's obligations, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any or all of the amount owing thereunder.

(c) The buyer waives any right of action against the contractor or holder, or a person acting on his or her behalf, for any illegal act committed in the collection of payments under the contract or agreement.

(d) The buyer relieves the contractor from liability for any legal remedies which the buyer may have against the contractor under the contract or agreement or any separate instrument executed in connection with the contract or agreement.

(e) The contractor, or holder, or a person acting on his or her behalf, is authorized to enter upon the premises of the buyer unlawfully, or is authorized to commit any breach of the peace in connection with any repossession or other entry upon the premises of the buyer.

(f) The contractor is entitled to liquidated damages for any cancellation, rescission, or failure or refusal to accept delivery of the goods or performance of the services covered in the contract or provided pursuant to the agreement.

(2) Any provision prohibited under subsection (1) is void but shall not otherwise affect the validity of the contract or agreement.

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

445.1207 Evidence of obligation; holder subject to claims and defenses of buyer; limitation on buyer's recovery.

Sec. 207. Notwithstanding the provisions of any other law and notwithstanding any agreement to the contrary:

(a) A person shall not take a negotiable instrument, other than a currently dated check or draft, as evidence of the obligation of the buyer in a home improvement installment sale or home improvement charge sale.

(b) A holder of a home improvement contract, home improvement charge agreement, or other evidence of

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 of 26 week United States treasury bills is 8% or more, the finance charge may be equivalent to 16.5% interest or less per annum on the unpaid balance. If the interest rate paid at 2 successive auctions of 26 weeks United States treasury bills again falls below 8%, the finance charge on a contract entered into after that date shall not exceed \$8.00 per \$100.00 per annum, unless the interest rate paid at 2 successive auctions of 26 week United States treasury bills again is 8% or more, in which case the finance charge may be equivalent to 16.5% interest or less per annum on the unpaid balance. The finance charge shall be computed on the principal amount financed on the contract notwithstanding that the time balance is required to be paid in installments. The finance charge shall not accrue over a longer period than one which commences on the date of completion of the contract and ends on the date when the final installment is payable. For a period less or greater than 12 months or for amounts less or greater than \$100.00, the amount of the maximum finance charge shall be increased or decreased proportionately. A fractional monthly period of 15 days or more may be considered a full month. If the finance charge computed as above provided is less than \$12.00, a minimum finance charge of \$12.00 may be made.

(2) Subject to the limitations in subsection (3), if a contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular, unequal or larger installment or installments, or if the finance charge accrues from a date more than 1 month before the first installment is payable, the finance charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same yield as if the contract were payable in accordance with the standard payment terms stated in subsection (1).

(3) If the amount of any installment is 2 times or more the amount of any other installment except the down payment, the amount of the finance charge in respect to the portion of the principal amount financed included in such larger installment shall not exceed the equivalent of 6% per annum simple interest for the period from the due date on which finance charge begins to accrue to the date of such larger installment and such portion of the finance charge shall be payable in substantially equal periodic installments throughout such period.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1980, Act 406, Imd. Eff. Jan. 8, 1981;—Am. 1983, Act 13, Eff. Mar. 22, 1983;—Am. 1988, Act 429, Imd. Eff. Dec. 27, 1988.

Compiler's note: Act 13 of 1983 was not signed by the Governor, but, having been presented to him at 11:21 a.m. on March 8, 1983, and not having been returned by him to the house in which it originated, became law at the expiration of the constitutional 14-day period, the Legislature having continued in session.

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, deferred, or refinanced.

(2) If a part of the finance charge is computed on an installment as provided in section 301(3), the amount of the refund credit applicable to that part of the finance charge shall represent at least as great a proportion of that part of the finance charge as the number of months to elapse after the month in which prepayment is made to the due date of that installment bears to the number of months from the date the finance charge accrues to the due date of that installment.

(3) Where the amount of the credit for anticipation of payment is less than \$1.00, a refund need not be made. Where the earned finance charge amounts to less than the minimum finance charge, there may be retained an amount equal to the minimum finance charge under section 301.

History: 1965, Act 332, Eff. Jan. 1, 1966;—Am. 1978, Act 96, Imd. Eff. Apr. 5, 1978.

445.1304 Scheduled payments; extension of due date; deferral charge.

Sec. 304. The holder of a home improvement installment contract, upon agreement in writing with the buyer, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of \$1.00 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.00. The agreement may also provide for payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract.

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

445.1305 Refinancing payment of unpaid balance; refinance charge, computation; refinancing agreement, consolidation of contracts.

Sec. 305. The holder of a home improvement installment contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinanced charge by the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 303 if he had prepaid in full his obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. Such refinance charge shall not exceed the rate of finance charge provided under section 301. The agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the maturity of the contract as refinanced, any insurance coverages provided therein. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional premiums paid for insurance and of official fees to the buyer, the amount of the finance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments. A refinancing agreement between a financing agency

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, at the contractor's option, be increased proportionately and that all terms and conditions of the contract shall apply equally to such sale or sales. In addition, the contract may provide for the payment by the buyer of the additional cost of premiums for continuing in force, until the due date of the final installment of the consolidated time balance, any insurance coverages provided for therein. The minimum finance charge as provided in section 301 may be used but once in any series of add-on home improvement installment sales.

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

445.1307 Finance charge; computation, maximum sale.

Sec. 307. Subject to the provisions of section 301, the finance charge to be included in a consolidated time balance shall be determined by applying a finance charge at a rate not exceeding the maximum rate specified in that section to either:

(a) The total of the principal amount financed under the subsequent sale and the unpaid balance of any previous contract determined by deducting from the unpaid time balance thereof as of the date the finance charge is to accrue on the subsequent sale, any then unearned finance charge in an amount not less than the refund credit provided for in section 303 computed without the allowance of any minimum earned finance charge, for the period from the date the finance charge is to accrue on the subsequent sale to and including the date when the final installment of such consolidated time balance is payable; or

(b) The principal amount financed under the subsequent sale for the period from the date the finance charge is to accrue thereon to and including the date when the final installment of such consolidated time balance is payable and, if the due date of the final installment of such consolidated time balance is later than the due date of the final installment of any previous contract included in the consolidated time balance, on the unpaid time balance of such previous contract as of the date the finance charge is to accrue on the subsequent sale for the period from the date when the final installment on the previous contract would have been payable to the date when the final installment of such consolidated time balance is payable.

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

445.1308 Subsequent sale; memorandum, contents.

Sec. 308. When a subsequent home improvement installment sale is made, the contractor shall deliver to the buyer, at the time the contract is executed, a memorandum which shall set forth the following with respect to the subsequent sale:

(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 subsequent sale.

(c) The amount of the buyer's down payment, in respect of the subsequent sale, 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, if any, included in the subsequent sale 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, in respect of the subsequent sale.

(g) The principal amount financed in respect of the subsequent sale which is the sum of items (d), (e) and (f).

(h) The unpaid time balance of the prior contract or contracts.

(i) The amount of any refund credit in respect of the prior contract or contracts.

(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 in installments of equal amounts.

Followed, if there be but one 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).

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. The memorandum need not make any reference to items (e), (f) or (k) if a charge for the item is not included. The memorandum shall contain the statement that the contractor is adding the subsequent home improvement installment sale to the buyer's existing contract in accordance with the provisions thereof. Until the contractor delivers to the buyer the memorandum as provided in this section, the buyer shall not be obligated to pay any installment due.

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

445.1309 Optional method of computing finance charge.

Sec. 309. Instead of a finance charge computed on the principal amount financed as determined under section 203 or 308, the seller may charge from time to time a finance charge consisting of interest on the amount of the unpaid principal balance of the contract. In this event, the transaction shall be subject to this act as modified by the following provisions:

(a) Finance charge shall mean the estimated amount of consideration in excess of the cash price which the buyer will pay in the form of interest assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(b) The maximum estimated finance charge shall not exceed the maximum dollar amount allowed pursuant to section 301 for contracts of the same contractual maturity computed on the actual number of days between installment payments.

(c) The number and amount of installment payments required to be stated pursuant to sections 203 and 308 shall be estimated for purposes of this section assuming that each scheduled payment is made on the date it is due and in the scheduled amount.

(d) The holder of the contract shall have the option of deferring interest charges which accrue due to installment payments being received later than the periodic installment due date. The deferred interest charge shall be computed on the basis of additional interest charges accruing for late installment payments and appropriate interest reductions for installment payments made before the due date. On contracts providing for equal monthly installments, if the final installment is more than 105% of a previous installment as a result of the deferred interest charges, the installment buyer shall be given the option to pay the deferred interest charges not less than 25 days after the date the last installment payment is due.

(e) If the entire principal balance is prepaid in full, together with all interest incurred to the date of prepayment, the balance of the original finance charge shall be canceled and the provisions of section 303 respecting a refund credit shall not be applicable.

History: Add. 1978, Act 96, Imd. Eff. Apr. 5, 1978.

PART 4

445.1401 Notice of assignment of contract or agreement.

Sec. 401. Unless the buyer has notice of the actual or intended assignment of a home improvement installment contract or home improvement charge agreement, payment under the contract or agreement by the buyer to the last known holder of the contract or agreement is binding upon all subsequent holders or assignees.

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

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.

Sec. 403. After the payment of all sums for which the buyer is obligated under a home improvement installment contract and upon demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such 1 or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all collateral.

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

445.1404 Compensation or reward for procurement of contract or agreement prohibited; giving tangible items for advertising or sales promotion purposes.

Sec. 404. (1) As part of or in connection with the inducement to make a home improvement installment contract or home improvement charge agreement, a person shall not promise or offer to pay, credit, or allow to a buyer any compensation or reward for the procurement of a home improvement installment contract or home improvement charge agreement with others.

(2) A person shall not offer, deliver, pay, credit, or allow to the buyer any gift, bonus, award, merchandise, or cash loan as an inducement to enter into a home improvement installment contract or to make a purchase under a home improvement charge agreement.

(3) A contractor or financing agency may give tangible items to prospective buyers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a home improvement installment contract or making a purchase under a home improvement charge agreement, but such item shall not have a cost value in excess of \$2.50 and a buyer or other person shall not receive more than 1 such item in connection with any 1 sale.

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

445.1405 Criminal violation of act by personnel deemed violation by contractor; exception.

Sec. 405. A criminal violation of any of the provisions of this act by a director, manager, partner, officer, salesman, agent or employee of a contractor or financing agency is deemed a criminal violation by such contractor or financing agency, unless it shall appear that the individuals engaged in the management of the contractor or financing agency had no actual or constructive knowledge of the wrongful conduct or was reasonably unable to prevent the violation.

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

445.1406 Unauthorized charges.

Sec. 406. A person shall not charge, collect, or receive from a buyer, directly or indirectly, any further or other amount for costs, credit investigation charges, insurance premiums, examination, appraisal, service, brokerage, commission, interest, discount, expense, fee, fine, penalty, or other thing of value in connection with a home improvement installment contract, home improvement charge agreement, or home improvement charge sale, other than the charges authorized by this act. Any such unauthorized charge shall be unenforceable. Any payment of an unauthorized charge shall be applied to the next maturing installment, or, if a contract has been fully paid or a balance is not owing under an agreement, shall be remitted to the buyer and the buyer shall be entitled to recover all such unauthorized charges.

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

445.1407 Cash loans.

Sec. 407. A cash loan shall not directly or indirectly be included in or combined or consolidated with any home improvement installment contract, home improvement charge sale, or home improvement charge agreement, or with any extension, deferment, refinancing, add-on, or consolidation agreement pertaining thereto.

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.

Sec. 410. This act does not apply to or affect the validity of a home improvement installment contract otherwise within the purview of this act, which is made prior to the effective date of the respective provisions of this act governing such contracts.

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

445.1421 Violation of act; misdemeanor, penalty.

Sec. 421. Any person who wilfully violates any provision of this act or directs or consents to such violation, is guilty of a misdemeanor and, upon conviction thereof, may be punished by imprisonment in the county jail for a period not to exceed 90 days and may be fined not more than \$500 or both for the first offense; and for each subsequent offense a like fine or imprisoned not to exceed 1 year, or both. Violation of any order, decree or injunction issued pursuant to the provisions of this act shall constitute prima facie proof of a violation of this section.

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

445.1422 Violation of act; injunction; violation of injunction, civil penalty.

Sec. 422. (1) The attorney general or the prosecuting attorney of any county may bring an action in the name of the state to restrain or prevent any violation of this act or any continuance of any such violation. Such action, in the case of the attorney general, shall be brought in the circuit court of Ingham county, upon which jurisdiction thereof is conferred, and, in the case of the prosecuting attorney, in the county where the defendant resides, has his principal place of business, or where the act sought to be restrained has been, or is about to be, performed.

(2) A person who violates any order or decree entered, or injunction issued, pursuant to subsection (1) is liable to a civil penalty of not more than \$1,000.00, in the discretion of the court, to be recovered as judgments are now by law recovered. For the purpose of this section, the circuit court entering any order or judgment, or issuing any injunction, under the provisions of this section may retain jurisdiction, and the cause may be continued.

(3) Any penalty directed to be paid under the provisions of this section shall be in addition to any penalty which may be imposed under the provisions of section 421.

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

445.1431 Effective date of act.

Sec. 431. This act shall take effect January 1, 1966.

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