

HOUSE BILL No. 6540

December 3, 2002, Introduced by Reps. Scranton and Lemmons and referred to the Committee on Insurance and Financial Services.

A bill to amend 1965 PA 332, entitled "Home improvement finance act," by amending section 102 (MCL 445.1102), as amended by 1985 PA 202, and by adding part 3A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) "Banking institution" means a bank, bank and trust com-
4 pany, trust company, savings bank, private bank, or a national
5 banking association, organized and doing business under the pro-
6 visions of any law of this state, or of any other state of the
7 United States, or under the provisions of any law of the United
8 States of America.

9 (b) "Cash price" means the cash sales price stated in a home
10 improvement installment contract, or the cash sales price of

1 goods and services that are the subject of a home improvement
2 charge sale, for which the contractor would sell or furnish to
3 the buyer and the buyer would buy or obtain from the contractor
4 the goods and services ~~which~~ THAT are the subject of the con-
5 tract or home improvement charge sale, if the sale were a sale
6 for cash, instead of a home improvement installment sale or home
7 improvement charge sale, and may include any taxes.

8 (c) "Collateral" means real or personal property subject to
9 a pledge, security interest, mortgage, encumbrance, judgment, or
10 other lien ~~which~~ THAT secures the performance of an obligation
11 of the buyer, or a surety or guarantor for the buyer, under a
12 home improvement installment contract or any extension, defer-
13 ment, renewal, or other revision. ~~thereof.~~

14 (d) "Down payment" means the amounts paid in money and in
15 goods to the home improvement contractor and allowances given by
16 the home improvement contractor to the buyer prior to or contem-
17 poraneous with the execution of a home improvement installment
18 contract.

19 (e) "Finance charge", "credit service charge", "service
20 charge", "time price differential", or a similar term means that
21 amount by which the time sale price exceeds the aggregate of the
22 cash price and the amounts, if any, included for insurance premi-
23 ums and official fees.

24 (f) "Financing agency" means a person, other than a home
25 improvement contractor, engaged, directly or indirectly, as prin-
26 cipal, agent, or broker in the business of purchasing, acquiring,
27 financing, soliciting, or arranging for the financing or

1 acquisition of home improvement installment contracts or home
2 improvement charge agreements or any obligation in connection
3 therewith. It does not include a person to the extent that the
4 person makes bona fide commercial loans to contractors or financ-
5 ing agencies and takes assignments of, or an interest in, an
6 aggregation of ~~such~~ THE contracts only as security for ~~such~~
7 THE commercial loans under which, in the absence of default or
8 other bona fide breach of the loan contract, ownership of ~~such~~
9 THE contracts remains vested in the assignor and collection of
10 payments on ~~such~~ THE contracts is made by the assignor.

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

15 (h) "Holder" means a person, including a contractor OR AN
16 ASSIGNEE, currently entitled to the rights of a contractor under
17 a home improvement installment contract or home improvement
18 charge agreement AND SUBJECT TO ALL THE RIGHTS AND DEFENSES THAT
19 A RETAIL BUYER MAY ASSERT AGAINST THE HOME IMPROVEMENT
20 CONTRACTOR.

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

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

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

11 (l) "Home improvement installment contract" or "contract"
12 means an agreement covering a home improvement installment sale,
13 whether contained in 1 or more documents, together with any
14 accompanying promissory note or other evidence of indebtedness,
15 pursuant to which the buyer promises to pay in installments all
16 or any part of the time sale price or prices of goods and serv-
17 ices, or services. It does not include ~~such~~ an agree THAT DOES
18 ANY OF THE FOLLOWING:

19 (i) ~~Pertaining~~ PERTAINS to real property used for a com-
20 mercial or business purpose.

21 (ii) ~~Covering~~ COVERS the sale of goods by a person who
22 ~~neither~~ DOES NOT directly ~~nor~~ OR indirectly ~~performs~~
23 PERFORM or ~~arranges~~ ARRANGE to perform any services in connec-
24 tion with the installation of or application of the goods.

25 (iii) ~~Covering~~ COVERS only an appliance designed to be
26 free-standing and not built into and permanently affixed as an
27 integral part of the structure ~~such as~~ INCLUDING, BUT NOT

1 LIMITED TO, a stove, freezer, refrigerator, air conditioner other
2 than one connected with a central heating system, hot water
3 heater, and ~~the like~~ ANY OTHER SIMILAR APPLIANCES.

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

7 (v) ~~If the~~ IS A loan THAT is contracted for or obtained
8 directly by the retail buyer from the lending institution,
9 person, or corporation.

10 (vi) ~~which is~~ IS a home improvement charge agreement.

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

16 (N) "HOME IMPROVEMENT SUBCONTRACTOR" OR "SUBCONTRACTOR"
17 MEANS A PERSON WHO PURSUANT TO A CONTRACT BETWEEN HIMSELF OR HER-
18 SELF AND A PERSON OTHER THAN THE OWNER OR LESSEE OF THE REAL
19 PROPERTY PERFORMS ANY PART OF A CONTRACTOR'S CONTRACT OR AGREE-
20 MENT FOR AN IMPROVEMENT.

21 (O) "LENDER" MEANS A BANKING INSTITUTION, A FINANCING
22 AGENCY, OR A PERSON WHO, DIRECTLY OR INDIRECTLY, MAKES OR OFFERS
23 TO MAKE LOANS FOR THE MODERNIZATION, REHABILITATION, REPAIR,
24 ALTERATION, OR IMPROVEMENT OF REAL PROPERTY.

25 (P) ~~(n)~~ "Official fees" means the fees required by law to
26 be paid to the appropriate public officer for obtaining any
27 permit or filing or recording or releasing any judgment,

1 mortgage, or other lien or perfecting any security interest taken
2 or reserved as security in connection with a home improvement
3 installment contract.

4 (Q) ~~(o)~~ "Person" means an individual, partnership, associ-
5 ation, business corporation, banking institution, nonprofit cor-
6 poration, common law trust, joint stock company, or any other
7 group of individuals, however organized.

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

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

17 (T) ~~(r)~~ "Services" means work, labor, and services fur-
18 nished in connection with the installation or application of
19 goods.

20 (U) ~~(s)~~ "Time balance" means the sum of the principal
21 amount financed and the finance charge.

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

PART 3A

1

2

3

4

5

6

7

8

SEC. 1325. (1) BEFORE A LENDER MAKES PARTIAL OR FULL PAYMENTS TO A HOME IMPROVEMENT CONTRACTOR, THE LENDER MUST RECEIVE REASONABLE ASSURANCE, THROUGH RELEASES OR OTHER CERTIFICATIONS, FROM ALL SUBCONTRACTORS THAT HAVE WORKED ON THE RESIDENCE UP TO THE TIME OF THAT SCHEDULED PAYMENT, THAT NO CLAIM OR LIEN HAS BEEN OR WILL BE PLACED ON THE PROPERTY FOR THAT PORTION OF THE WORK FOR WHICH THE PAYMENT IS MADE.

9

10

11

12

(2) PROCEEDS OF A LOAN PURSUANT TO A HOME IMPROVEMENT CHARGE AGREEMENT, HOME IMPROVEMENT CHARGE SALE, HOME IMPROVEMENT INSTALLMENT CONTRACT, OR HOME IMPROVEMENT INSTALLMENT SALE SHALL BE DISBURSED ONLY TO 1 OF THE FOLLOWING:

13

14

15

16

- (A) THE BUYER.
- (B) THE BUYER AND CONTRACTOR JOINTLY.
- (C) A BONA FIDE ESCROW AGENT OF THE LENDER.

17

18

19

20

21

22

(3) PRIOR TO PAYING MORE THAN 70% OF THE FULL PRICE CONTRACTED FOR UNDER THE HOME IMPROVEMENT CHARGE AGREEMENT, HOME IMPROVEMENT CHARGE SALE, HOME IMPROVEMENT INSTALLMENT CONTRACT, OR HOME IMPROVEMENT INSTALLMENT SALE, THE LENDER SHALL OBTAIN AN INSPECTION OF THE STATUS AND CONDITION OF THE IMPROVEMENTS MADE TO THE REAL PROPERTY FROM AN INDEPENDENT INSPECTOR WHO SHALL PROVIDE A CERTIFICATE THAT CONTAINS THE FOLLOWING:

23

24

25

(A) A VERIFIED STATEMENT THAT THE INSPECTOR HAS INSPECTED THE PROPERTY AND THAT THE HOME IMPROVEMENTS ARE SATISFACTORILY COMPLETED IN ACCORDANCE WITH ACCEPTED INDUSTRY STANDARDS.

26

27

(B) A VERIFIED STATEMENT SHOWING THAT THE INSPECTOR HAS INSPECTED THE PROPERTY AND THAT THE HOME IMPROVEMENTS COMPLY WITH

1 ALL APPLICABLE HOUSING OR BUILDING CODES REQUIRED BY STATE OR
2 LOCAL LAW.

3 (4) IF THE PAYMENT OF MORE THAN 70% OF THE CASH PRICE IS
4 MADE BY A LENDER TO A CONTRACTOR OR BROKER PURSUANT TO A HOME
5 IMPROVEMENT CHARGE AGREEMENT, HOME IMPROVEMENT CHARGE SALE, HOME
6 IMPROVEMENT INSTALLMENT CONTRACT, OR HOME IMPROVEMENT INSTALLMENT
7 SALE WITHOUT THE LENDER HAVING FULLY COMPLIED WITH THE REQUIRE-
8 MENTS OF THIS SECTION, THE RETAIL BUYER HAS A COMPLETE DEFENSE
9 FOR NONPAYMENT OF THAT HOME IMPROVEMENT CHARGE AGREEMENT, HOME
10 IMPROVEMENT CHARGE SALE, HOME IMPROVEMENT INSTALLMENT CONTRACT,
11 OR HOME IMPROVEMENT INSTALLMENT SALE.