

HOUSE BILL No. 4710

June 7, 2011, Introduced by Reps. Kurtz, Foster, Daley, Scott, Gilbert, Bumstead, Damrow, Kowall, Huuki and Callton and referred to the Committee on Commerce.

A bill to amend 1950 (Ex Sess) PA 27, entitled "Motor vehicle sales finance act," by amending section 2 (MCL 492.102), as amended by 1995 PA 166.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. ~~Except where the context indicates otherwise, as AS~~
2 used in this act:

3 (A) "ADMINISTRATOR" MEANS THE COMMISSIONER OF THE OFFICE OF
4 FINANCIAL AND INSURANCE REGULATION IN THE DEPARTMENT OF ENERGY,
5 LABOR, AND ECONOMIC GROWTH.

6 (B) "CASH PRICE" MEANS THE PRICE MEASURED IN DOLLARS AT WHICH
7 A SELLER OF A MOTOR VEHICLE WOULD IN GOOD FAITH SELL TO THE BUYER
8 OR TO ANY OTHER BUYER UNDER LIKE CIRCUMSTANCES, AND THE BUYER WOULD
9 IN GOOD FAITH BUY FROM THE SELLER, THE MOTOR VEHICLE THAT IS THE

1 SUBJECT MATTER OF AN INSTALLMENT SALE CONTRACT IF THE SALE WERE A
2 SALE FOR CASH INSTEAD OF AN INSTALLMENT SALE.

3 (C) "COLLATERAL SECURITY" MEANS SECURITY, OTHER THAN A
4 SECURITY INTEREST IN A MOTOR VEHICLE THAT IS THE SUBJECT OF AN
5 INSTALLMENT SALE CONTRACT, THAT IS GIVEN TO SECURE PERFORMANCE OF
6 AN OBLIGATION OF THE BUYER, OR OF ANY SURETY OR GUARANTOR FOR THE
7 BUYER, UNDER AN INSTALLMENT SALE CONTRACT. THE TERM INCLUDES THE
8 UNDERTAKINGS OF ANY SURETY OR GUARANTOR FOR THE BUYER AND ANY
9 INTEREST IN, ENCUMBRANCE ON, OR PLEDGE OF REAL OR PERSONAL PROPERTY
10 OTHER THAN THE MOTOR VEHICLE THAT IS THE SUBJECT OF THE INSTALLMENT
11 SALE CONTRACT.

12 (D) "DOWN PAYMENT" MEANS ALL PARTIAL PAYMENTS, WHETHER MADE IN
13 CASH OR OTHERWISE, RECEIVED BY OR FOR THE BENEFIT OF THE SELLER
14 BEFORE OR SUBSTANTIALLY CONTEMPORANEOUS WITH EITHER THE EXECUTION
15 OF THE INSTALLMENT SALE CONTRACT OR THE DELIVERY OF THE MOTOR
16 VEHICLE SOLD UNDER THAT CONTRACT, WHICHEVER OCCURS LATER.

17 (E) "FINANCE CHARGE" MEANS THAT TERM AS DEFINED IN SECTION 106
18 OF THE TRUTH IN LENDING ACT, 15 USC 1605.

19 (F) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONAL
20 CHARTERED BANK, A STATE OR FEDERAL CHARTERED SAVINGS AND LOAN
21 ASSOCIATION, OR A STATE OR FEDERAL CHARTERED CREDIT UNION.

22 (G) "HOLDER" MEANS A SELLER OR OTHER PERSON THAT IS CURRENTLY
23 ENTITLED TO THE RIGHTS OF A SELLER UNDER AN INSTALLMENT SALE
24 CONTRACT.

25 (H) "INSTALLMENT BUYER" OR "BUYER" MEANS A PERSON THAT BUYS,
26 HIRES, OR LEASES A MOTOR VEHICLE FOR PERSONAL, FAMILY, OR HOUSEHOLD
27 USE, AND NOT FOR COMMERCIAL, BUSINESS, OR AGRICULTURAL USE, UNDER

1 AN INSTALLMENT SALE CONTRACT OR A LEGAL SUCCESSOR IN INTEREST TO
2 THAT PERSON.

3 (I) "INSTALLMENT SALE CONTRACT" OR "CONTRACT" MEANS AN
4 AGREEMENT FOR THE RETAIL SALE OF A MOTOR VEHICLE, OR THAT HAS A
5 SIMILAR PURPOSE OR EFFECT, UNDER WHICH PART OR ALL OF THE PRICE IS
6 PAYABLE IN 2 OR MORE SCHEDULED PAYMENTS SUBSEQUENT TO THE MAKING OF
7 THE AGREEMENT OR UNDER WHICH THE OBLIGOR UNDERTAKES TO MAKE 2 OR
8 MORE SCHEDULED PAYMENTS OR DEPOSITS THAT CAN BE USED TO PAY PART OR
9 ALL OF THE PURCHASE PRICE, WHETHER OR NOT THE SELLER HAS RETAINED A
10 SECURITY INTEREST IN THE MOTOR VEHICLE OR HAS TAKEN COLLATERAL
11 SECURITY FOR THE BUYER'S OBLIGATION, AND ANY EXTENSION, DEFERMENT,
12 RENEWAL, OR OTHER REVISION OF THAT AGREEMENT. THE TERMS INCLUDE A
13 LOAN, MORTGAGE, CONDITIONAL SALE CONTRACT, PURCHASE-MONEY CHATTEL
14 MORTGAGE, HIRE-PURCHASE AGREEMENT, OR AGREEMENT FOR THE BAILMENT OR
15 LEASING OF A MOTOR VEHICLE UNDER WHICH THE HIRE-PURCHASER, THE
16 BAILEE, OR THE LESSEE AGREES TO PAY AS COMPENSATION A SUM
17 SUBSTANTIALLY EQUIVALENT TO OR IN EXCESS OF THE VALUE OF THE MOTOR
18 VEHICLE, AND ANY OTHER FORM OF AGREEMENT THAT HAS A SIMILAR PURPOSE
19 OR EFFECT. THE TERMS DO NOT INCLUDE A SALE OR CONTRACT FOR SALE ON
20 AN OPEN BOOK ACCOUNT IN WHICH THE SELLER HAS NOT RETAINED OR TAKEN
21 A SECURITY INTEREST IN THE MOTOR VEHICLE SOLD OR COLLATERAL
22 SECURITY FOR THE BUYER'S OBLIGATION, THE BUYER IS NOT REQUIRED TO
23 PAY ANY SUM OTHER THAN THE CASH PRICE OF THE MOTOR VEHICLE SOLD IN
24 CONNECTION WITH THE SALE OR EXTENSION OF CREDIT, AND THE BUYER IS
25 OBLIGATED TO PAY FOR THE MOTOR VEHICLE IN FULL WITHIN 90 DAYS AFTER
26 THE TIME THE SALE OR CONTRACT FOR SALE WAS MADE.

27 (J) "INSTALLMENT SELLER" OR "SELLER" MEANS A PERSON ENGAGED IN

1 THE BUSINESS OF SELLING, OFFERING FOR SALE, HIRING, OR LEASING
2 MOTOR VEHICLES UNDER INSTALLMENT SALE CONTRACTS OR A LEGAL
3 SUCCESSOR IN INTEREST TO THAT PERSON. AS USED IN THIS SUBDIVISION,
4 "BUSINESS" DOES NOT INCLUDE AN ISOLATED SALE.

5 (K) "LICENSED FINANCIAL INSTITUTION" MEANS A FINANCIAL
6 INSTITUTION ISSUED A LICENSE UNDER THIS ACT.

7 (L) "LICENSEE" MEANS A PERSON ISSUED A LICENSE UNDER THIS ACT
8 AS AN INSTALLMENT SELLER OR A SALES FINANCE COMPANY AND WHOSE
9 LICENSE HAS NOT EXPIRED OR BEEN SURRENDERED OR REVOKED, AND IN THE
10 PLURAL MEANS A PERSON OR PERSONS LICENSED UNDER 1 OR BOTH OF THESE
11 2 CLASSIFICATIONS. THE TERM INCLUDES A LICENSED FINANCIAL
12 INSTITUTION.

13 (M) 1.—"Motor vehicle" means a self-propelled device by which
14 a person or property may be transported upon a public highway OR A
15 RECREATIONAL VEHICLE. ~~Motor vehicle~~—THE TERM does not include
16 ~~tractors, motorcycles, trailers, semitrailers, power shovels, A~~
17 TRACTOR, MOTORCYCLE, TRAILER, SEMITRAILER, OR POWER SHOVEL. THE
18 TERM DOES NOT INCLUDE road machinery, agricultural machinery, and
19 OR other machinery not designed primarily for highway
20 transportation but ~~which~~—THAT incidentally transports persons or
21 property on a public highway. ~~Motor vehicle also~~—THE TERM does not
22 include ~~devices that move~~—A DEVICE THAT MOVES upon or ~~are~~—IS guided
23 by a track or ~~travel~~—TRAVELS through the air.

24 (N) 2.—"Person" means an individual, partnership, association,
25 corporation, LIMITED LIABILITY COMPANY, governmental entity, or any
26 other legal entity.

27 (O) "PRINCIPAL AMOUNT FINANCED" MEANS THE UNPAID CASH PRICE

1 BALANCE AFTER DEDUCTING THE DOWN PAYMENT, ADDING THE COST OF ANY
2 INSURANCE PREMIUMS REQUIRED OR OBTAINED AS SECURITY FOR OR BY
3 REASON OF THE SALE OF A MOTOR VEHICLE UNDER AN INSTALLMENT SALE
4 CONTRACT, AND ADDING OTHER COSTS NECESSARY OR INCIDENTAL TO THE
5 SALE OF THE MOTOR VEHICLE UNDER THE CONTRACT THAT THE SELLER
6 CONTRACTS TO PAY ON BEHALF OF THE BUYER AND FOR THE AMOUNT OF WHICH
7 THE SELLER AGREES TO EXTEND CREDIT TO THE BUYER AND FOR WHICH THE
8 BUYER CONTRACTS VOLUNTARILY.

9 (P) "PUBLIC SALE" MEANS A PUBLIC SALE AFTER ADVERTISEMENT OF
10 EACH MOTOR VEHICLE IN AT LEAST 2 SUCCESSIVE PUBLICATIONS IN A
11 NEWSPAPER HAVING GENERAL CIRCULATION IN THE VILLAGE, CITY, OR
12 TOWNSHIP IN WHICH THE SALE IS TO BE HELD. THE ADVERTISEMENT SHALL
13 DISCLOSE THE PLACE WHERE THE MOTOR VEHICLE IS STORED AND MAY BE
14 INSPECTED, THE DATE, TIME, AND PLACE OF THE SALE, AND THE MAKE,
15 MODEL, AND SERIAL NUMBER OF THE VEHICLE.

16 (Q) "RECREATIONAL VEHICLE" MEANS A RECREATIONAL VEHICLE, AS
17 THAT TERM IS DEFINED IN SECTION 49A OF THE MICHIGAN VEHICLE CODE,
18 1949 PA 300, MCL 257.49A, EXCEPT A PARK MODEL TRAILER AS DEFINED IN
19 SECTION 38A OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.38A.

20 (R) "RETAIL SALE" MEANS A SALE OF A MOTOR VEHICLE FOR USE BY A
21 BUYER OR FOR THE BENEFIT OR SATISFACTION THAT THE BUYER MAY DERIVE
22 FROM THE USE OF THE MOTOR VEHICLE BY ANOTHER.

23 ~~3. "Installment buyer" or "buyer" means a person who buys,~~
24 ~~hires, or leases a motor vehicle for personal, family, or household~~
25 ~~use and not for commercial, business, or agricultural use, under an~~
26 ~~installment sale contract or a legal successor in interest to that~~
27 ~~person, and shall continue to designate that person notwithstanding~~

1 ~~that he or she may have entered into 1 or more extensions,~~
 2 ~~deferments, renewals, or other revisions of the original contract.~~

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

8 ~~5. "Holder" means a person, including a seller, who is~~
 9 ~~currently entitled to the rights of a seller under an installment~~
 10 ~~sale contract.~~

11 ~~(S) 6.~~ "Sales finance company" means a person engaged as **A**
 12 principal, agent, or broker in the business of financing or
 13 soliciting the financing of installment sale contracts made between
 14 other parties, and ~~includes~~ **IN** the business of acquiring, investing
 15 in, or lending money or credit on the security of the retail
 16 seller's interest in ~~such~~ **THOSE** contracts whether by discount,
 17 purchase, or assignment of those contracts, or otherwise. **THE TERM**
 18 **INCLUDES A LICENSEE OR OTHER PERSON WHO AS A SELLER FINANCES**
 19 **INSTALLMENT SALE CONTRACTS FOR OTHER SELLERS OR SALES FINANCE**
 20 **COMPANIES. THE TERM INCLUDES A LICENSED FINANCIAL INSTITUTION.** The
 21 term does not include ~~a~~ **ANY OF THE FOLLOWING:**

22 **(i) A** person, financial institution, or sales finance company
 23 that takes ~~assignments~~ **AN ASSIGNMENT** of ~~an~~ or an interest in ~~an~~
 24 aggregation of installment sale contracts only as security for bona
 25 fide commercial loans under which, in the absence of default or
 26 other bona fide breach of the loan contract, ownership of the
 27 contracts remains vested in the assignor and collection of payments

1 on the contracts is made by the assignor. ~~nor a~~

2 (ii) A person who purchases installment sale contracts from a
3 sales finance company or **FROM** a **LICENSED** financial institution. The
4 ~~term includes a person, whether or not licensed under this act, who~~
5 ~~as a seller finances installment sale contracts for other sellers~~
6 ~~or sales finance companies. The term includes a financial~~
7 ~~institution.~~

8 ~~7. "Financial institution" means a state or national chartered~~
9 ~~bank, a state or federal chartered savings and loan association, or~~
10 ~~state or federal chartered credit union that elects to come under~~
11 ~~the provisions of this act.~~

12 ~~8. "Retail sale" means the sale of a motor vehicle for use by~~
13 ~~the buyer or for the benefit or satisfaction which the buyer may~~
14 ~~derive from the use of the motor vehicle by another.~~

15 ~~9. "Installment sale contract" or "contract" means a contract~~
16 ~~for the retail sale of a motor vehicle, or which has a similar~~
17 ~~purpose or effect, under which part or all of the price is payable~~
18 ~~in 2 or more scheduled payments subsequent to the making of the~~
19 ~~contract, or as to which the obligor undertakes to make 2 or more~~
20 ~~scheduled payments or deposits that can be used to pay part or all~~
21 ~~of the purchase price, whether or not the seller has retained a~~
22 ~~security interest in the motor vehicle or has taken collateral~~
23 ~~security for the buyer's obligation, and includes a loan, mortgage,~~
24 ~~conditional sale contract, purchase money chattel mortgage, hire-~~
25 ~~purchase agreement, or contract for the bailment or leasing of a~~
26 ~~motor vehicle under which the hire purchaser, the bailee, or the~~
27 ~~lessee contracts to pay as compensation a sum substantially~~

1 ~~equivalent to or in excess of the value of the motor vehicle, and~~
2 ~~any other form of contract that has a similar purpose or effect.~~
3 ~~The terms do not include a sale or contract for sale upon an open~~
4 ~~book account in which the seller has not retained or taken a~~
5 ~~security interest in the motor vehicle sold or collateral security~~
6 ~~for the buyer's obligation, the buyer is not required to pay any~~
7 ~~sum other than the cash price of the motor vehicle sold in~~
8 ~~connection with the sale or extension of credit, and the buyer is~~
9 ~~obligated to pay for the motor vehicle in full within 90 days after~~
10 ~~the time the sale or contract for sale was made. These terms also~~
11 ~~mean and apply to any extension, deferment, renewal, or other~~
12 ~~revision of an installment sale contract.~~

13 ~~—— 10. "Cash price" means the price measured in dollars at which~~
14 ~~the seller would in good faith sell to the buyer or to any other~~
15 ~~buyer under like circumstances, and the buyer would in good faith~~
16 ~~buy from the seller, the motor vehicle that is the subject matter~~
17 ~~of the installment sale contract if the sale were a sale for cash~~
18 ~~instead of an installment sale.~~

19 ~~—— 11. "Down payment" means all partial payments, whether made in~~
20 ~~cash or otherwise, received by or for the benefit of the seller~~
21 ~~before or substantially contemporaneous with either the execution~~
22 ~~of the installment sale contract or the delivery of the goods sold~~
23 ~~under that contract, whichever occurs later.~~

24 ~~—— 12. "Principal amount financed" means the unpaid cash price~~
25 ~~balance after deducting the down payment, adding the cost of any~~
26 ~~insurance premiums required or obtained as security for or by~~
27 ~~reason of the sale of a motor vehicle under an installment sale~~

1 ~~contract, and adding other costs necessary or incidental to the~~
2 ~~sale of the motor vehicle under the contract which the seller~~
3 ~~contracts to pay on behalf of the buyer and for the amount of which~~
4 ~~the seller agrees to extend credit to the buyer and for which the~~
5 ~~buyer contracts voluntarily.~~

6 ~~—— 13. "Finance charge" means that term as defined in section 106~~
7 ~~of chapter 1 of the truth in lending act, title I of the consumer~~
8 ~~credit protection act, Public Law 90-321, 15 U.S.C. 1605.~~

9 ~~—— 14. "Time balance" means the sum of the principal amount~~
10 ~~financed and the finance charge.~~

11 ~~(T) 15.—"Security interest" means a property right in the A~~
12 ~~motor vehicle that is the subject of an installment sale contract,~~
13 ~~if the right is retained to secure performance of an obligation of~~
14 ~~the buyer under that contract. and an extension, deferment,~~
15 ~~renewal, or other revision of that contract. The term includes a~~
16 ~~lien or encumbrance against that THE motor vehicle, a mortgage~~
17 ~~interest in that THE motor vehicle, and a reservation of title to~~
18 ~~that THE motor vehicle, whether or not expressed to be absolute, if~~
19 ~~the title is in substance retained only for security.~~

20 ~~—— 16. "Collateral security" means security, other than a~~
21 ~~security interest in a motor vehicle that is the subject of an~~
22 ~~installment sale contract, which is given to secure performance of~~
23 ~~an obligation of the buyer, or of any surety or guarantor for the~~
24 ~~buyer, under an installment sale contract or an extension,~~
25 ~~deferment, renewal, or other revision of that contract. The term~~
26 ~~includes the undertakings of any surety or guarantor for the buyer~~
27 ~~and any interest in, encumbrance on, or pledge of real or personal~~

1 ~~property other than the motor vehicle which is the subject of the~~
2 ~~installment sale contract.~~

3 ~~—— 17. "Administrator" means the commissioner of the financial~~
4 ~~institutions bureau, department of commerce.~~

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

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

18 **(U) "TIME BALANCE" MEANS THE SUM OF THE PRINCIPAL AMOUNT**
19 **FINANCED AND THE FINANCE CHARGE.**

20 Enacting section 1. This amendatory act does not take effect
21 unless Senate Bill No. ____ or House Bill No. 4711(request no.
22 01200'11 a) of the 96th Legislature is enacted into law.