

HOUSE BILL No. 4711

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 1966 PA 224, entitled
"Retail installment sales act,"
by amending section 2 (MCL 445.852), as amended by 1995 PA 167.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (A) "CASH SALE PRICE" MEANS THE PRICE OF A GOOD OR SERVICE A
3 RETAIL BUYER WOULD PAY IF HE OR SHE PAID FOR THE GOOD OR SERVICE IN
4 CASH, AND THAT IS STATED IN A RETAIL INSTALLMENT CONTRACT OR IN A
5 SALES SLIP OR OTHER MEMORANDUM FURNISHED BY A RETAIL SELLER TO A
6 RETAIL BUYER PURSUANT TO A RETAIL CHARGE AGREEMENT FOR THAT GOOD OR
7 SERVICE. THE CASH SALE PRICE MAY INCLUDE ANY TAXES AND CHARGES FOR
8 DELIVERY, INSTALLATION, SERVICING, REPAIRS, ALTERATIONS, OR
9 IMPROVEMENTS.

1 (B) ~~(a)~~—"Goods" means all tangible chattels purchased
2 primarily for personal, family, or household use and not for
3 commercial, agricultural, or business use. Goods include chattels
4 that are furnished or used for the modernization, rehabilitation,
5 repair, alteration, improvement, or construction of real property
6 ~~so as to~~ **IN A MANNER THAT THEY** become a severable or nonseverable
7 part of the property, if those chattels are not covered by the home
8 improvement finance act, ~~Act No. 332 of the Public Acts of 1965,~~
9 ~~being sections 445.1101 to 445.1431 of the Michigan Compiled Laws~~
10 **1965 PA 332, MCL 445.1101 TO 445.1431.** Goods include merchandise
11 certificates or coupons issued by a retail seller that are not
12 redeemable in cash and that are to be used in their face amount
13 instead of cash, in exchange for goods or services sold by the
14 seller. Goods do not include a motor vehicle, money, a thing in
15 action, intangible personal property, or their equivalent.

16 ~~(b) "Services" means work, labor, advice, counseling, or~~
17 ~~instruction if purchased primarily for personal, family, or~~
18 ~~household use and not for commercial or business use. Services do~~
19 ~~not include any of the following:~~

20 ~~(i) Work, labor, advice, counseling, or instruction for which~~
21 ~~the cost is fixed by law or subject to the approval or disapproval~~
22 ~~of the United States or this state.~~

23 ~~(ii) Educational counseling or instruction provided by an~~
24 ~~accredited college or university or a primary or secondary school~~
25 ~~providing education required by the state.~~

26 ~~(iii) Counseling or instruction of a kindergarten or nursery~~
27 ~~school.~~

1 (C) "HOLDER" MEANS A RETAIL SELLER OF GOODS OR SERVICES
2 COVERED BY A RETAIL INSTALLMENT CONTRACT OR RETAIL CHARGE
3 AGREEMENT, OR AN ASSIGNEE OF THAT SELLER.

4 (D) ~~(e)~~ "Motor vehicle" means ~~a self propelled device by which~~
5 ~~a person or property may be transported upon a public highway.~~

6 ~~Motor vehicle~~ THAT TERM AS DEFINED IN SECTION 2 OF THE MOTOR
7 VEHICLE SALES FINANCE ACT, 1950 (EX SESS) PA 27, MCL 492.102. THE
8 TERM does not include ~~any of the following:~~

9 ~~—— (i) A~~ mobile home as ~~that term is defined in section 719a of~~
10 ~~the Michigan vehicle code, Act No. 300 of the Public Acts of 1949,~~
11 ~~being section 257.719a of the Michigan Compiled Laws 1949 PA 300,~~
12 MCL 257.719A.

13 ~~—— (ii) Tractors, motorcycles, trailers and semitrailers, power~~
14 ~~shovels, road machinery, agricultural machinery, and other~~
15 ~~machinery not designed primarily for highway transportation but~~
16 ~~which incidentally transports persons or property on a public~~
17 ~~highway. Motor vehicle also does not include devices that move upon~~
18 ~~or are guided by a track or travel through the air.~~

19 (E) "OFFICIAL FEES" MEANS FEES PRESCRIBED BY LAW AND CHARGED
20 AND PAID BY THE SELLER OR HOLDER FOR FILING, RECORDING, OR
21 OTHERWISE PERFECTING, RELEASING, OR SATISFYING, A RETAINED TITLE,
22 LIEN, OR OTHER SECURITY INTEREST CREATED BY A RETAIL INSTALLMENT
23 TRANSACTION.

24 (F) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, JOINT VENTURE,
25 CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, OR OTHER LEGAL
26 ENTITY.

27 (G) "PRINCIPAL BALANCE" MEANS THE CASH SALE PRICE OF THE GOODS

1 OR SERVICES COVERED BY A RETAIL INSTALLMENT CONTRACT PLUS THE
2 AMOUNTS, IF ANY, INCLUDED IN THE CASH SALE PRICE IF A SEPARATE
3 IDENTIFIED CHARGE IS MADE AND STATED IN THE CONTRACT FOR INSURANCE
4 OR OFFICIAL FEES, LESS THE AMOUNT OF THE BUYER'S DOWN PAYMENT IN
5 MONEY OR GOODS, OR BOTH.

6 (H) ~~(d)~~—"Retail buyer" or "buyer" means a person ~~who~~ **THAT** buys
7 or agrees to buy goods or obtain services or agrees to have
8 services rendered or furnished from a retail seller.

9 ~~—— (e) "Retail seller" or "seller" means a person regularly and~~
10 ~~principally engaged in the business of selling goods or services to~~
11 ~~retail buyers, but does not include the services of a professional~~
12 ~~person licensed by the state to perform legal or dental services or~~
13 ~~medical services as a medical doctor or a doctor of osteopathy.~~

14 ~~—— (f) "Retail installment transaction" means any transaction in~~
15 ~~which a retail buyer purchases goods or services from a retail~~
16 ~~seller pursuant to a retail installment contract or a retail charge~~
17 ~~agreement that provides for a time price differential and under~~
18 ~~which the buyer agrees to pay the unpaid balance in 1 or more~~
19 ~~installments. Retail installment transaction does not include a~~
20 ~~rental purchase agreement as defined in section 2 of the rental-~~
21 ~~purchase agreement act, Act No. 424 of the Public Acts of 1984,~~
22 ~~being section 445.952 of the Michigan Compiled Laws.~~

23 (I) **"RETAIL CHARGE AGREEMENT" MEANS AN INSTRUMENT PRESCRIBING**
24 **THE TERMS OF A SECURED OR UNSECURED RETAIL INSTALLMENT TRANSACTION**
25 **THAT MAY BE MADE UNDER THE INSTRUMENT FROM TIME TO TIME AND UNDER**
26 **THE TERMS OF WHICH A TIME PRICE DIFFERENTIAL IS TO BE COMPUTED IN**
27 **RELATION TO THE BUYER'S UNPAID BALANCE FROM TIME TO TIME.**

1 (J) ~~(g)~~—"Retail installment contract" means an instrument
2 entered into in this state evidencing a secured or unsecured retail
3 installment transaction, and includes a chattel mortgage, a
4 security agreement, a conditional sale contract, or a bailment or
5 lease contract if the bailment or lease contract requires the
6 bailee or lessee to pay an amount equal to or greater than the
7 value of the bailed or leased good, and additionally provides that
8 the bailee or lessee shall become, for no additional consideration
9 or for nominal consideration, the owner of the good ~~upon~~ **ON** full
10 compliance with the bailment or lease contract. Retail installment
11 contract does not include any of the following:

12 (i) A rental-purchase agreement as defined in section 2 of the
13 rental-purchase agreement act, ~~Act No. 424 of the Public Acts of~~
14 ~~1984~~ **1984 PA 424, MCL 445.952.**

15 (ii) A retail charge agreement.

16 (iii) An instrument evidencing a sale made pursuant to a retail
17 charge agreement.

18 ~~—— (h) "Retail charge agreement" means an instrument prescribing~~
19 ~~the terms of a secured or unsecured retail installment transaction~~
20 ~~that may be made under the instrument from time to time and under~~
21 ~~the terms of which a time price differential is to be computed in~~
22 ~~relation to the buyer's unpaid balance from time to time.~~

23 **(K) "RETAIL INSTALLMENT TRANSACTION" MEANS ANY TRANSACTION IN**
24 **WHICH A RETAIL BUYER PURCHASES GOODS OR SERVICES FROM A RETAIL**
25 **SELLER PURSUANT TO A RETAIL INSTALLMENT CONTRACT OR A RETAIL CHARGE**
26 **AGREEMENT THAT PROVIDES FOR A TIME PRICE DIFFERENTIAL AND UNDER**
27 **WHICH THE BUYER AGREES TO PAY THE UNPAID BALANCE IN 1 OR MORE**

1 INSTALLMENTS. RETAIL INSTALLMENT TRANSACTION DOES NOT INCLUDE A
2 RENTAL-PURCHASE AGREEMENT AS DEFINED IN SECTION 2 OF THE RENTAL-
3 PURCHASE AGREEMENT ACT, 1984 PA 424, MCL 445.952.

4 (l) "RETAIL SELLER" OR "SELLER" MEANS A PERSON REGULARLY AND
5 PRINCIPALLY ENGAGED IN THE BUSINESS OF SELLING GOODS OR SERVICES TO
6 RETAIL BUYERS, BUT DOES NOT INCLUDE THE SERVICES OF A PROFESSIONAL
7 PERSON LICENSED BY THE STATE TO PERFORM LEGAL OR DENTAL SERVICES OR
8 MEDICAL SERVICES AS A MEDICAL DOCTOR OR A DOCTOR OF OSTEOPATHY.

9 (M) "SERVICES" MEANS WORK, LABOR, ADVICE, COUNSELING, OR
10 INSTRUCTION IF PURCHASED PRIMARILY FOR PERSONAL, FAMILY, OR
11 HOUSEHOLD USE AND NOT FOR COMMERCIAL OR BUSINESS USE. SERVICES DO
12 NOT INCLUDE ANY OF THE FOLLOWING:

13 (i) WORK, LABOR, ADVICE, COUNSELING, OR INSTRUCTION FOR WHICH
14 THE COST IS FIXED BY LAW OR SUBJECT TO THE APPROVAL OR DISAPPROVAL
15 OF THE UNITED STATES OR THIS STATE.

16 (ii) EDUCATIONAL COUNSELING OR INSTRUCTION PROVIDED BY AN
17 ACCREDITED COLLEGE OR UNIVERSITY OR A PRIMARY OR SECONDARY SCHOOL
18 PROVIDING EDUCATION REQUIRED BY THE STATE.

19 (iii) COUNSELING OR INSTRUCTION OF A KINDERGARTEN OR NURSERY
20 SCHOOL.

21 (N) ~~(i)~~—"Time price differential" means the amount a buyer
22 pays or is required to pay for the privilege of purchasing goods or
23 services in installments over a period of time. Time price
24 differential does not include the amount, if any, charged for
25 insurance premiums, delinquency charges, attorney fees, court
26 costs, or official fees, but does include all other charges
27 included in a finance charge as that term is defined in section 106

1 of chapter I of the truth in lending act, ~~title I of the consumer~~
2 ~~credit protection act, Public Law 90-321, 15 U.S.C. USC~~ 1605.

3 ~~—— (j) "Cash sale price" means the price of a good or service a~~
4 ~~retail buyer would pay if he or she paid for the good or service in~~
5 ~~cash, and that is stated in a retail installment contract or in a~~
6 ~~sales slip or other memorandum furnished by a retail seller to a~~
7 ~~retail buyer pursuant to a retail charge agreement for that good or~~
8 ~~service. The cash sale price may include any taxes and charges for~~
9 ~~delivery, installation, servicing, repairs, alterations, or~~
10 ~~improvements.~~

11 ~~—— (k) "Official fees" means fees prescribed by law and charged~~
12 ~~and paid by the seller or holder for filing, recording, or~~
13 ~~otherwise perfecting, releasing, or satisfying, a retained title,~~
14 ~~lien, or other security interest created by a retail installment~~
15 ~~transaction.~~

16 (O) ~~(l)~~ "Time sale price" means the cash sale price of goods or
17 services and the amount, if any, included for official fees, the
18 time price differential, and, if a separate identified charge is
19 made, for insurance.

20 ~~—— (m) "Principal balance" means the cash sale price of the goods~~
21 ~~or services covered by a retail installment contract plus the~~
22 ~~amounts, if any, included in the cash sale price if a separate~~
23 ~~identified charge is made and stated in the contract for insurance~~
24 ~~or official fees, less the amount of the buyer's down payment in~~
25 ~~money or goods, or both.~~

26 ~~—— (n) "Holder" means the retail seller of goods or services~~
27 ~~covered by a retail installment contract or retail charge~~

1 ~~agreement, or his or her assignee.~~

2 ~~—— (o) "Person" means an individual, partnership, joint venture,~~
3 ~~corporation, association, or other legal entity.~~

4 Enacting section 1. This amendatory act does not take effect
5 unless Senate Bill No. ____ or House Bill No. 4710 (request no.
6 01200'11) of the 96th Legislature is enacted into law.