RETAIL INSTALLMENT SALES ACT

Act 224 of 1966

AN ACT to regulate retail installment sales transactions, agreements, charges and disclosures; and to provide for the enforcement thereof and penalties for violations.

History: 1966, Act 224, Eff. Mar. 10, 1967

The People of the State of Michigan enact:

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445.851 Retail installment sales act; short title.

Sec. 1.

This act shall be known and may be cited as the "retail installment sales act".

History: 1966, Act 224, Eff. Mar. 10, 1967

445.851a Truth in lending act; effect of compliance.

Sec. 1a.

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 sections 3(d) and 12(b).

History: Add. 1969, Act 31, Imd. Eff. July 10, 1969 ;-- Am. 1993, Act 112, Eff. Sept. 19, 1993

445.852 Definitions.

Sec. 2.

As used in this act:

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

(b) "Goods" means all tangible chattels purchased primarily for personal, family, or household use and not for commercial, agricultural, or business use. Goods include chattels that are furnished or used for the modernization, rehabilitation, repair, alteration, improvement, or construction of real property in a manner that they become a severable or nonseverable part of the property, if those chattels are not covered by the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431. Goods include merchandise certificates or coupons issued by a retail seller that are not redeemable in cash and that are to be used in their face amount instead of cash, in exchange for goods or services sold by the seller. Goods do not include a motor vehicle, money, a thing in action, intangible personal property, or their equivalent.

(c) "Holder" means a retail seller of goods or services covered by a retail installment contract or retail charge agreement, or an assignee of that seller.

(d) "Motor vehicle" means that term as defined in section 2 of the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.102. The term does not include a mobile home as defined in section 719a of the Michigan vehicle code, 1949 PA 300, MCL 257.719a.

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

(f) "Person" means an individual, partnership, joint venture, corporation, limited liability company, association, or other legal entity.

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

(h) "Retail buyer" or "buyer" means a person that buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished from a retail seller.

(i) "Retail charge agreement" means an instrument prescribing the terms of a secured or unsecured retail installment transaction that may be made under the instrument 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) "Retail installment contract" means an instrument entered into in this state evidencing a secured or unsecured retail installment transaction, and includes a chattel mortgage, a security agreement, a conditional sale contract, or a bailment or lease contract if the bailment or lease contract requires the bailee or lessee to pay an amount equal to or greater than the value of the bailed or leased good, and additionally provides that the bailee or lessee shall become, for no additional consideration or for nominal consideration, the owner of the good on full compliance with the bailment or lease contract. Retail installment contract does not include any of the following:

(i) A rental-purchase agreement as defined in section 2 of the rental-purchase agreement act, 1984 PA 424, MCL 445.952.

(ii) A retail charge agreement.

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

(k) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement that provides for a time price differential and under which the buyer agrees to pay the unpaid balance in 1 or more installments. Retail installment transaction does not include a rental-purchase agreement as defined in section 2 of the rental-purchase agreement act, 1984 PA 424, MCL 445.952.

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

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

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

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

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

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(n) "Time price differential" means the amount a buyer pays or is required to pay for the privilege of purchasing goods or services in installments over a period of time. Time price differential does not include the amount, if any, charged for insurance premiums, delinquency charges, attorney fees, court costs, or official fees, but does include all other charges included in a finance charge as that term is defined in section 106 of chapter I of the truth in lending act, 15 USC 1605.

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

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1972, Act 191, Imd. Eff. June 21, 1972 ;-- Am. 1987, Act 33, Imd. Eff. May 27, 1987 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996 ;-- Am. 2013, Act 17, Imd. Eff. Apr. 23, 2013

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445.853 Retail installment contract; requirements; size; notice to buyer; delivery of copy; nondelivery; provisions; contents of contract; transaction involving vehicle; terms; statement that seller retains security interest.

Sec. 3.

Each retail installment contract shall be in writing, dated, signed by the retail buyer or the authorized representative of the retail buyer and completed as to all essential provisions, except as otherwise provided in sections 5 and 6. A seller, agent of the seller, or employee of the seller, acting in the course of his or her employment shall not act as the authorized representative of a retail buyer under this act.

(a) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least 8-point type. The contract shall be designated "retail installment contract" and 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 contract before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. You are entitled to a partial return of the finance charge if you prepay the balance."

(b) The retail seller shall deliver to the retail buyer, or mail to him or her at his or her address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller delivers or mails a copy of the contract, the buyer, to any extent that he or she has not received delivery of the goods or been furnished or rendered the services, has the right to rescind his or her contract and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if those goods cannot be returned, the value of the goods. Any reliance by a holder other than the seller on written acknowledgment by the buyer of delivery of a copy of the contract shall be based upon a statement in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer and shall require a separate signature of the buyer or the authorized representative of the buyer.

(c) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer, and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered.

(d) The retail installment contract shall contain the following items:

(1) The cash sale price of the goods or services.

(2) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in.

(3) The difference between subparagraphs (1) and (2).

(4) The itemized amounts of official fees.

(5) The aggregate amount, if any, included for insurance, if a separate identified charge is made therefor, specifying the type or types of insurance and the term or terms of coverage.

(6) If the retail installment transaction involves goods that are a vehicle, the cost of any guaranteed asset protection waiver that the seller agrees to extend credit to the buyer to obtain. For purposes of this subparagraph, all of the following apply:

(i) "Guaranteed asset protection waiver" means that term as defined in section 3 of the guaranteed asset protection waiver act.

(ii) "Vehicle" means goods that are a motor vehicle, as that term is defined in section 3 of the guaranteed asset protection waiver act, that is not subject to the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(iii) A guaranteed asset protection waiver may be included as part of, or as an addendum to, a retail installment contract.

(iv) A retail seller that offers, sells, or provides guaranteed asset protection waivers to retail buyers in this state must comply with the guaranteed asset protection waiver act.

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

(7) The principal balance, which is the total of the amounts described in subparagraphs (3), (4), (5), and (6).

(8) The amount of the time price differential for the full term of the contract.

(9) The amount of the time balance owed by the buyer to the seller, which is the total of the amounts described in subparagraphs (7) and (8).

(10) Except as otherwise provided in this subparagraph, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay the time balance set forth in subparagraph (9). If installment payments other than the final payment are stated as a series of equal schedule amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

(11) The time sale price.

(12) If any installment, except the down payment, is more than double the average of all other installments, except the down payment, the following legend printed in at least 10-point bold type or typewritten: "This contract is not payable in installments of equal amounts", followed, if there is but 1 larger installment, by: "An installment of $..... will be due on ....." or, if there is more than 1 larger installment, by: "larger installments will be due as follows: .....", in the latter case inserting the amount of every larger installment and of its due date. The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

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(13) A notice to the buyer that on his or her request the seller must provide or make available for examination by the buyer a statement or table showing how the partial refund of the time price charge is to be computed if any balance of the contract is prepaid.

(14) A statement that the seller retains a security interest in the subject matter of the retail installment contract or retail charge agreement if he or she does so and a statement setting forth the nature and terms of the security interest retained, and the following legend printed in at least 10-point bold type or typewritten: "The seller retains a security interest in the subject matter of this agreement".

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 2009, Act 232, Eff. July 7, 2010

445.854 Retail installment contracts; single document not required; sales slip, account book, other written statements.

Sec. 4.

A retail installment contract need not be contained in a single document. If the contract is contained in more than 1 document, 1 such document may be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case, the document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this subsection and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement at the option of the seller may constitute the memorandum required by section 11. No seller shall induce a buyer to become obligated at substantially the same time under more than 1 retail installment contract for the purpose of obtaining a higher time price differential than would apply to 1 contract.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.855 Transactions negotiated and entered into by mail or telephone; applicable provisions of act; memorandum.

Sec. 5.

(1) A retail installment transaction negotiated and entered into by mail or telephone without personal solicitations by a salesperson or other representative of the seller and based upon a catalog of the seller, or other printed solicitation which clearly sets forth the cash sale prices and other terms of sales to be made through the medium may be made as provided in this section. The provisions of this act with respect to a retail installment transaction shall be applicable to the sale, except that:

(a) The designation and notice provisions of sections 3(a) and 12(a) shall not be applicable to the retail installment contract or retail charge agreement.

(b) The retail installment contract or retail charge agreement, when completed by the buyer, need not contain the items required by section 3(d) or 12(a). When the retail installment contract or retail charge agreement is received from the retail buyer, the seller shall either prepare a written memorandum containing all of the information required by section 3(d) to be included in a retail installment transaction or shall deliver a copy of the retail charge agreement to the retail buyer as provided in section 12(a) prior to the due date of the first installment or payment payable under the contract or agreement.

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(2) When the retail installment contract or retail charge agreement is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by sections 3(d) and 12(a) to be included in a retail installment transaction. Instead of delivering a copy of the contract or agreement to the retail buyer as provided in sections 3(b) and 12(a), the seller shall deliver to the buyer a copy of the memorandum prior to the due date of the first installment or payment payable under the contract or agreement.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1977, Act 127, Eff. Jan. 1, 1978

445.856 Retail installment contracts; blank space; filling.

Sec. 6.

A retail installment contract shall not be signed by any party thereto when it contains blank spaces of items which are essential provisions of the transaction, but if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's acknowledgment, conforming to the requirement of subsection (b) of section 3, of delivery of a copy of the contract shall be presumptive proof, or, in the case of a holder of the contract without knowledge to the contrary when he purchases it, conclusive proof of such delivery and of compliance with this subsection and any other requirement relating to completion of the contract prior to execution thereof by the buyer, in any action or proceeding.

History: 1966, Act 224, Eff. Mar. 10, 1967

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445.857 Time price differential; limitation; computation; minimum time price differential.

Sec. 7.

A retail installment contract may provide for, and the seller or holder may then charge, collect, and receive a time price differential that does not exceed the rate of interest or its equivalent permitted a regulated lender by the credit reform act. The time price differential may be computed on the basis of a full month for a fractional portion of a month in excess of 10 days. A minimum time price differential of not more than $10.00 may be charged, received, and collected on each contract, whether or not the contract is prepaid.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1978, Act 97, Imd. Eff. Apr. 5, 1978 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996

445.858 Prepayment of unpaid balance; amount of refund credit.

Sec. 8.

(1) Notwithstanding contrary provisions of a retail installment contract, a buyer may prepay in full the unpaid balance of the retail installment contract at any time before its final due date and, if the buyer does so, shall receive a refund credit for the prepayment, except as provided in section 23. The amount of the refund credit shall not be less than the amount that would be refunded using the actuarial method.

(2) A refund credit of less than $1.00 need not be made.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1978, Act 97, Imd. Eff. Apr. 5, 1978 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996

445.859 Installment contract or retail charge agreement; delinquency and collection charge.

Sec. 9.

The holder of an installment contract or retail charge agreement, or retail charge agreement including a contract subject to section 23, if it so provides, may collect a delinquency and collection charge on each installment in default for a period of more than 10 days. A delinquency and collection charge is not a liquidated damage.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1993, Act 112, Eff. Sept. 19, 1993 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996

445.860 Retail installment contracts; statement of dates, payments and unpaid balances; receipt.

Sec. 10.

Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer shall be given a written receipt for any payment when made in cash. The statement or receipt shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of $1.00 for each additional statement or receipt so supplied.

History: 1966, Act 224, Eff. Mar. 10, 1967

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445.861 Retail installment transactions; subsequent purchases; previous contracts; inclusion and consolidation; new schedule of installment payments.

Sec. 11.

(a) If, in a retail installment transaction, a retail buyer purchases goods or services from a retail seller from whom he or she has previously purchased goods or services under 1 or more retail installment contracts, and the amounts under the previous contracts have not been fully paid, the subsequent purchases may be included in and consolidated with 1 or more of the previous contracts at the seller's option. Each subsequent purchase shall be a separate retail installment contract under this act, notwithstanding that the purchase may be included in and consolidated with 1 or more previous contracts. All the provisions of this act with respect to retail installment contracts apply to subsequent purchases except as otherwise provided in this section.

(b) In the event of consolidation, if the buyer does not execute a retail installment contract respecting each subsequent purchase as provided in this act, the seller may prepare a written memorandum of each subsequent purchase and the provisions of section 3 do not apply. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum, or otherwise, the memorandum shall contain items (1) to (8) of section 3(d) and the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any. The seller shall

deliver to the buyer a copy of the memorandum prior to the due date of the first installment of the consolidated contract.

(c) When subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any 1 of the contracts included in the consolidation, the entire amount of all payments made prior to the subsequent purchases are considered to have been applied to the unpaid time balances of the previous purchases. Each payment after the subsequent purchase made on the consolidated contract shall be considered to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with subsequent purchases, at the seller's option, the subsequent payments may be considered to be allocated as an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. The amount of a down payment on the subsequent purchase shall be allocated in its entirety to the subsequent purchase. This subsection does not apply if the previous and subsequent purchases involve equipment, parts or other goods attached or affixed to goods previously purchased and not fully paid, or to services rendered by the seller at the buyer's request.

(d) (1) The holder of a retail 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 under the contract. 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 the rate permitted a regulated lender by the credit reform act, amounts to less than $1.00. The agreement may also provide for the buyer's payment of the additional cost to the holder of the contract of premiums for continuing in force until the end of the period of extension or deferral any insurance coverage provided for in the contract. The extension or deferral shall be confirmed in writing by the holder.

(2) The holder of a retail 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 refinance charge by the buyer and collect and receive the refinance charge, but the refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to the refinancing, after the deduction of a refund or credit in an amount equal to that to which the buyer would have been entitled under section 8, if he or she had prepaid in full his or her obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. The refinance charge shall not exceed the rate of interest or its equivalent permitted a regulated lender by the credit reform act. 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.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996
Compiler's Notes: In the second sentence of subdivision (c), after the second instance of “of the various purchases” evidently should read “that the various purchases.”

445.862 Retail charge agreement; delivery of copy to buyer; acknowledgment; blank spaces; statement of time price differential; notice to buyer; periodic statement; computation of time price differential; adjustment of charges; attorney's fee and court costs.

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Sec. 12.

(a) A retail charge agreement shall be in writing and signed by the buyer or the authorized representative of the buyer. A retail charge agreement shall be considered signed and accepted by the buyer if after a request for a retail charge account the agreement or application for a retail charge account is in fact signed by the buyer or if the retail charge account is used by the buyer or by another person authorized by the buyer. The agreement may provide that it does not become effective until the seller or holder extends credit to the buyer, the buyer has received the disclosures required under the federal truth-in-lending act, 15 U.S.C. 1601 to 1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1638, 1640 to 1647, and 1661 to 1667e, and the buyer or a person authorized by the buyer uses the retail charge account. A copy of the agreement shall be delivered or mailed to the buyer before the date the first payment is due under the agreement. The acknowledgment by the buyer of delivery of a copy of the agreement shall be in a size equal to at least 10-point boldfaced type and shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer. An agreement shall not be signed by the buyer when it contains blank spaces for essential provisions of the transaction. The buyer's acknowledgment of delivery of a copy of an agreement in accordance with this section is presumptive proof in any action or proceeding of the delivery and that the agreement did not contain any blank spaces. A retail charge agreement shall state the maximum amount and rate of the time price differential to be charged and paid under the agreement. An agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point boldfaced 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.".

(b) The buyer under the retail charge agreement shall promptly be supplied with a statement if at the end of a monthly period, which need not be a calendar month, or other regular period agreed upon in writing, there is an unpaid balance under the agreement. The statement shall contain all of the following:

(1) The unpaid balance under the retail charge agreement at the beginning and at the end of the period.

(2) The cash sale price of each purchase 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 and a brief description or identification of each purchase.

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

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

(5) A statement that the buyer at any time may pay his or her total unpaid balance or any part of that balance.

(c) A retail charge agreement may provide for, and the seller or holder may then charge, collect, and receive, a time price differential for the privilege of paying in installments under the agreement at a rate not greater than the rate permitted a regulated lender by the credit reform act, Act No. 162 of the Public Acts of 1995, being sections 445.1851 to 445.1864 of the Michigan Compiled Laws. 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. If the regular period is other than a monthly period, the time price differential may be computed proportionately. The time price differential may be computed for all unpaid balances within a range of $10.00 or less on the basis of the median amount within that range if as so computed the time price differential is applied to all unpaid balances within that range. A minimum time price differential of not more than 70 cents per month may be charged, received, and collected.

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(d) The time price differential for purchases made under a retail 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. 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 chapter 4 of the truth in lending act, title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1666 to 1666j.

(e) A retail charge agreement may also provide for the payment of an attorney's reasonable fee if it is referred for collection to an attorney not a salaried employee of the holder of the retail charge agreement or holder of an unpaid balance under the agreement, and for court costs.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1978, Act 120, Imd. Eff. Apr. 25, 1978 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996 ;-- Am. 1996, Act 431, Imd. Eff. Dec. 2, 1996

445.862a Submission of invoice evidencing credit card sale.

Sec. 12a.

If a retail seller elects to accept a credit card issued by a bank, the retail seller shall not submit an invoice evidencing such credit card sale to the card issuer until the goods or services purchased with the credit card have been delivered to the purchaser.

History: Add. 1978, Act 120, Imd. Eff. Apr. 25, 1978

445.863 Retail installment contracts or charge agreements; insurance included in cost; requirements; minimum charges; refunds.

Sec. 13.

(a) If the cost of insurance is included in the retail installment contract or the retail charge agreement and a separate charge is made to the buyer for the insurance:

(1) The contract or agreement shall state the nature, purpose and the amount of the insurance.

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller.

(3) The amount included for the insurance may not exceed the premiums chargeable in accordance with the rate fixed for the insurance by the insurer except where the amount is less than $1.00; and if the insurance is cancelled or terminated for any reason, any refund for unearned insurance premiums received by the seller or the holder, shall be credited to the final maturing installments of the retail installment contract or retail charge agreement, and any remaining balance of the unearned insurance premiums shall be refunded to the buyer. No credit or cash refund shall be required if the amount thereof is less than $1.00.

(b) If the insurance is to be procured by the seller or holder, within 45 days after delivery of the goods or furnishing of the services under the contract or agreement he shall deliver, mail, or cause to be delivered or mailed to the buyer at his address as specified in the contract or agreement, a notice that the insurance is procured, a copy of the policy or policies of insurance, or a certificate of the insurance so procured.

History: 1966, Act 224, Eff. Mar. 10, 1967

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445.864 Retail installment contracts or charge agreements; prohibited provisions; denial of application based on geographic location of residence prohibited; permissible conduct; exemption; contract for financial services not required; offer of combination of services not precluded by subsection (5).

Sec. 14.

(1) Any of the following provisions contained in a retail installment contract or retail charge agreement are void and unenforceable:

(a) In the absence of the buyer's default in the performance of any of the buyer's obligations, the holder may accelerate the maturity of a part or all of the amount owing.

(b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given.

(c) The seller or holder or other person acting on the seller's or holder's behalf is given authority to enter upon the buyer's premises unlawfully or to commit a breach of the peace in the repossession of goods.

(d) The buyer waives a right of action against the seller or holder or other person acting on the seller's or holder's behalf, for an illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods.

(e) The buyer executes a power of attorney appointing the seller or holder, or other person acting on the seller's or holder's behalf, as the buyer's agent in collection of payments under the contract or agreement or in the repossession of goods.

(f) The buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

(g) An agreement by the buyer to pay liquidated damages.

(2) A seller shall not deny an application for a retail installment contract or retail charge agreement based in whole or in part upon the geographic location of the residence of the applicant.

(3) Subsection (2) shall not preclude a seller from doing any of the following:

(a) Limiting its retail installment contracts or retail charge agreements to residents of this state or to all counties contiguous to the county in which the business is located, and including that county of location.

(b) Denying an application for a retail installment contract or retail charge agreement, if the store at the location to which the application is made gives equal consideration to all applicants who reside in that store's trade area, with respect to the geographic location of the residence of each applicant. As used in this subdivision, "trade area" includes the places of residence of all regular customers of the store.

(c) Denying an application for a retail installment contract or retail charge agreement if the seller maintains a consistent credit evaluation system within at least 2 contiguous counties, and that system does not take into consideration the geographic location of the residence of an applicant in determining whether the applicant should be granted or denied a retail installment contract or retail charge agreement, and the seller does not grant a retail installment contract or retail charge agreement in any other county.

(d) Researching payment and repayment rates in selected geographic locations for the purpose of detecting causative factors.

(4) Subsection (2) shall not apply to a seller whose annual gross receipts for sales of goods and services within this state are less than $2,000,000.00.

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(5) A retail seller shall not require as a condition of approving the retail installment transaction that the retail buyer contract for 1 or more financial services offered by the retail seller or a particular service provider designated by the retail seller.

(6) Subsection (5) does not preclude a retail seller from offering a combination of 2 or more services under prices or terms that are more favorable to the retail buyer than the prices or terms the services would be offered separately.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1980, Act 272, Eff. Mar. 31, 1981 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996

Compiler's Notes: In subsection (6), "the prices or terms the services would be offered" evidently should read "the prices or terms at which the services would be offered."

445.865 Purchase or acquisition of retail installment contract or retail charge agreement by assignee; terms, conditions, and price; evidence of obligation; validity of written assignment; notice; payment to last known holder; claims and defenses; sales to which section applicable.

Sec. 15.

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

(a) An assignee may purchase or acquire or agree to purchase or acquire any retail installment contract or retail charge agreement or any outstanding balance under either from a seller on the terms and conditions and for a price as may be mutually agreed upon, but 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 retail installment transaction.

(b) Filing of the assignment, notice to the buyer of the assignment, and any requirement that the seller be deprived of dominion over payments upon a retail installment contract or retail charge agreement, or over the goods if returned to or repossessed by the seller, shall not be necessary to the validity of a written assignment of the retail installment contract or retail charge agreement or any outstanding balance under either as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the seller.

(c) Unless the assignee gives written notice of the assignment to the buyer by certified mail, or personally serves the buyer with the notice, a payment made by the buyer to the holder last known to the buyer shall be binding upon all subsequent holders.

(d) A holder of a retail installment contract of the buyer is subject to all the claims and defenses of the buyer arising out of the retail installment transaction, but the buyer's recovery shall not exceed the amount paid to the holder thereunder.

(e) This section shall apply only to sales made pursuant to a retail installment contract.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1972, Act 161, Eff. Jan. 1, 1973 ;-- Am. 1980, Act 76, Imd. Eff. Apr. 3, 1980

445.865a Contracts, agreements, or other transactions considered made in state; offer or agreement to sell in state; acceptance or offer to buy in state.

Sec. 15a.

(1) For the purposes of this act, a retail installment contract, retail charge agreement, or other retail installment transaction shall be considered to have been made in this state if either the seller offers or agrees in this state to sell to a buyer who is a resident of this state or the

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buyer accepts or makes the offer in this state to buy, regardless of the specified situs of the contract or agreement.

(2) An oral or written solicitation or communication to sell originating outside this state, but forwarded to, directed to, and received in this state by a buyer who is a resident of this state shall be considered an offer or agreement to sell in this state.

(3) An oral or written solicitation or communication to buy originating within this state from a buyer who is a resident of this state, but forwarded, directed to, and received by a retail seller outside of this state shall be considered an acceptance or offer to buy in this state.

History: Add. 1977, Act 127, Eff. Jan. 1, 1978

445.866 Waiver of act as to buyers' protection prohibited.

Sec. 16.

No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchase thereunder shall constitute a valid waiver of any of the provisions of this act or of any remedies granted to the buyer by law.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.867 Violation of act; misdemeanor.

Sec. 17.

Any person who wilfully and intentionally violates any provisions of this act shall be guilty of a misdemeanor.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.868 Violation of act; effect as to recovery rights of seller.

Sec. 18.

Any seller who enters into any contract or agreement which does not comply with the provisions of this act or who violates any provision of this act except as a result of accidental or bona fide error is barred from the recovery of any time price differential, any official fees, delinquency or collection charge, attorney fees or court costs and the buyer shall be entitled to recover his reasonable attorney fees and court costs from the seller or his assigns.

Notwithstanding the provisions of this section, nothing in this act shall bar recovery upon a contract which is lawful where executed and is executed outside this state by a buyer who was not at the time of such execution a bona fide resident of this state, except that no seller or seller's assign may in any such action recover a greater total time price differential upon any retail installment contract or charge agreement than the maximum lawful rate which would have been permitted by this act if such contract or agreement had been executed in this state.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.869 Violation of act; actions; penalties.

Sec. 19.

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(1) The attorney general, the prosecuting attorney for the county where an alleged violation occurred, or a borrower may bring an action against a retail seller to do 1 or more of the following:

(a) Obtain a declaratory judgment that a method, act, or practice of a retail seller is a violation of this act.

(b) Enjoin a retail seller who is engaging or about to engage in a method, act, or practice that is a violation of this act.

(c) Recover $1,000.00 and actual damages if the alleged violation of this act was committed by a retail seller for a noncredit card arrangement or $1,500.00 and actual damages if the alleged violation involved any other credit arrangements.

(d) Recover reasonable attorney fees and the costs in connection with bringing an action under this act if the retail seller is found to have violated this act.

(e) In an action brought by the attorney general or a county prosecutor, recover a civil fine of not more than $10,000.00 if the retail seller is found to have willfully and knowingly violated this act and $20,000.00 if the retail seller is found to have persistently violated this act.

(2) Except for a violation described in section 12, a retail seller who violates this act in the extension of credit to a borrower or buyer shall not recover any interest or other charges in connection with the extension of credit. The borrower or buyer may recover reasonable attorney fees and court costs for enforcing this subsection or in defending against a cause of action brought by a retail seller who has violated this act.

(3) The attorney general or a borrower may bring a class action on behalf of persons injured by a violation of this act.

History: 1966, Act 224, Eff. Mar. 10, 1967 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996

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445.870 Violation of act; assurance of discontinuance; acceptance by attorney general, approval of circuit court.

Sec. 20.

The attorney general, or with his consent a prosecuting attorney, may accept an assurance of discontinuance of any act or practice deemed in violation of this act from any person engaging in, or who has engaged in, such act or practice. Any assurance shall be in writing and filed with and subject to the approval of the circuit court of the county in which the alleged violator resides or has his principal place of business. Failure to perform the terms of any assurance constitutes prima facie proof of a violation of this act for the purpose of securing any injunction as provided in section 19 and for the purpose of section 18. After commencement of any action by a prosecuting attorney, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.871 Violation of order of circuit court; civil penalty.

Sec. 21.

Any person who violates any order of a circuit court issued pursuant to this act shall forfeit and pay a civil penalty of not more than $1,000.00. For the purpose of this section, the court issuing any order shall retain jurisdiction for a period of 10 years and the cause shall be

continued for that period, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties during the period of any order.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.871a Compliance with federal truth-in-lending act; violation as unintentional and bona fide error; burden of proof.

Sec. 21a.

A retail seller is not liable for a violation of this act if the retail seller has fully complied with the federal truth-in-lending act, Public Law 90-321, 15 U.S.C. 1601 to 1607e and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under this act is not a bona fide error. A violation of this act resulting from a bona fide error may be corrected in the same manner as provided for in section 130(b) of the truth-in-lending act, 15 U.S.C. 1640(b). The burden of proving that a violation was an unintentional and bona fide error is on the retail seller.

History: Add. 1995, Act 167, Eff. Mar. 28, 1996

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445.872 Effect of act as to prior contracts.

Sec. 22.

The provisions of this act shall not invalidate or make unlawful or unenforceable, retail installment contracts or retail charge agreements executed prior to the effective date of this act, or liabilities at any time incurred thereunder.

History: 1966, Act 224, Eff. Mar. 10, 1967

445.873 Time price differential consisting of interest on amount of unpaid principal balance of contract; modifications.

Sec. 23.

Instead of a time price differential computed on the original principal balance, the seller may charge from time to time a time price differential consisting of interest on the amount of the unpaid principal balance of the contract. The transaction is subject to this act as modified by the following provisions:

(a) The number and amount of installment payments required to be stated under section 3 may 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.

(b) The holder of the contract has the option of deferring interest charges that 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.

(c) If the entire principal balance is prepaid in full, together with all interest incurred to the date of prepayment, the balance of the original time price differential shall be canceled and the provisions of section 8 respecting a refund credit shall not be applicable.

History: Add. 1978, Act 97, Imd. Eff. Apr. 5, 1978 ;-- Am. 1995, Act 167, Eff. Mar. 28, 1996

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