

HOUSE BILL NO. 5361

November 14, 2023, Introduced by Reps. Morse and Skaggs and referred to the Committee on Judiciary.

A bill to amend 1966 PA 224, entitled "Retail installment sales act," by amending sections 1a, 3, 5, 6, and 11 (MCL 445.851a, 445.853, 445.855, 445.856, and 445.861), section 1a as amended by 1993 PA 112, section 3 as amended by 2009 PA 232, and section 11 as amended by 1995 PA 167.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1a. Compliance with the requirements of the truth in
2 lending act, ~~title I of Public Law 90-321, 15 U.S.C. 15 USC~~ 1601 to
3 ~~1608, 1610 to 1613, 1615, 1631 to 1635, 1637 to 1638, 1640 to 1647,~~
4 ~~and 1661 to 1667e,~~ **1667f**, is compliance with the disclosure

1 provisions of sections ~~3(d)~~**3(5)** and 12(b).

2 Sec. 3. **(1)** ~~Each~~**A** retail installment contract ~~shall~~**must** be
3 in writing, dated, signed by the retail buyer or the authorized
4 representative of the retail buyer and completed as to all
5 essential provisions, except as otherwise provided in sections 5
6 and 6. A seller, agent of the seller, or employee of the seller,
7 acting in the course of ~~his or her~~**the individual's** employment
8 shall not act as the authorized representative of a retail buyer
9 under this act.

10 **(2)** ~~(a)~~The printed or typed portion of the contract, other
11 than instructions for completion, ~~shall~~**must** be in a size equal to
12 at least 8-point type. The contract ~~shall~~**must** be designated
13 "retail installment contract" and ~~shall~~**must** contain substantially
14 the following notice printed or typed in a size equal to at least
15 10-point bold type:

16 "Notice to the buyer: Do not sign this contract before you
17 read it or if it contains blank spaces. You are entitled to a copy
18 of the contract you sign. You are entitled to a partial return of
19 the finance charge if you prepay the balance."

20 **(3)** ~~(b)~~The retail seller shall deliver to the retail buyer,
21 or mail to ~~him or her~~**the retail buyer** at ~~his or her~~**the retail**
22 **buyer's** address shown on the retail installment contract, a copy of
23 the contract as accepted by the seller. Until the seller delivers
24 or mails a copy of the contract, the buyer, to any extent that ~~he~~
25 ~~or she~~**the buyer** has not received delivery of the goods or been
26 furnished or rendered the services, has the right to rescind ~~his or~~
27 ~~her~~**the** contract and to receive a refund of all payments made and
28 return of all goods traded in to the seller on account of or in
29 contemplation of the contract, or if those goods cannot be

1 returned, the value of the goods. Any reliance by a holder other
2 than the seller on written acknowledgment by the buyer of delivery
3 of a copy of the contract ~~shall~~**must** be based ~~upon~~**on** a statement
4 in a size equal to at least 10-point bold type and, if contained in
5 the contract, ~~shall~~**must** appear directly above the buyer's
6 signature or the signature of the authorized representative of the
7 buyer and ~~shall~~**must** require a separate signature of the buyer or
8 the authorized representative of the buyer.

9 (4) ~~(e)~~The retail installment contract ~~shall~~**must** contain the
10 names of the seller and the buyer, the place of business of the
11 seller, the residence or other address of the buyer as specified by
12 the buyer, and a description or identification of the goods sold or
13 to be sold, or services furnished or rendered or to be furnished or
14 rendered.

15 (5) ~~(d)~~The retail installment contract ~~shall~~**must** contain **all**
16 **of** the following items:

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

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

20 (c) ~~(3)~~The difference between ~~subparagraphs (1)~~**subdivisions**
21 **(a)** and ~~(2)~~**(b)**.

22 (d) ~~(4)~~The itemized amounts of official fees.

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

27 (f) ~~(6)~~If the retail installment transaction involves goods
28 that are a vehicle, the cost of any guaranteed asset protection
29 waiver that the seller agrees to extend credit to the buyer to

1 obtain. For purposes of this ~~subparagraph~~, **subdivision**, all of the
2 following apply:

3 (i) "Guaranteed asset protection waiver" means that term as
4 defined in section 3 of the guaranteed asset protection waiver act,
5 **2009 PA 229, MCL 492.23.**

6 (ii) "Vehicle" means goods that are a motor vehicle, as that
7 term is defined in section 3 of the guaranteed asset protection
8 waiver act, **2009 PA 229, MCL 492.23**, that is not subject to the
9 motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101
10 to ~~492.141~~. **492.137a.**

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

13 (iv) A retail seller that offers, sells, or provides guaranteed
14 asset protection waivers to retail buyers in this state must comply
15 with the guaranteed asset protection waiver act, **2009 PA 229, MCL**
16 **492.21 to 492.33.**

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

22 (g) ~~(7)~~—The principal balance ~~, which~~ **that** is the total of the
23 amounts described in ~~subparagraphs (3), (4), (5), and~~
24 ~~(6)~~. **subdivisions (c), (d), (e), and (f).**

25 (h) ~~(8)~~—The amount of the time price differential for the full
26 term of the contract.

27 (i) ~~(9)~~—The amount of the time balance owed by the buyer to
28 the seller ~~, which~~ **that** is the total of the amounts described in
29 ~~subparagraphs (7) and (8)~~. **subdivisions (g) and (h).**

1 (j) ~~(10)~~ Except as otherwise provided in this ~~subparagraph,~~
 2 **subdivision**, the maximum number of installment payments required
 3 and the amount of each installment and the due date of each payment
 4 necessary to pay the time balance set forth in ~~subparagraph (9).~~
 5 **subdivision (i)**. If installment payments other than the final
 6 payment are stated as a series of equal schedule amounts and if the
 7 amount of the final installment payment does not substantially
 8 exceed the scheduled amount of each preceding installment payment,
 9 the maximum number of payments and the amount and due date of each
 10 payment need not be separately stated and the amount of the
 11 scheduled final installment payment may be stated as the remaining
 12 unpaid balance. The due date of the first installment payment may
 13 be fixed by a day or date or may be fixed by reference to the date
 14 of the contract or to the time of delivery or installation.

15 (k) ~~(11)~~ The time sale price.

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

29 (m) ~~(13)~~ A notice to the buyer that on ~~his or her~~ **the buyer's**

1 request the seller must provide or make available for examination
 2 by the buyer a statement or table showing how the partial refund of
 3 the time price charge is to be computed if any balance of the
 4 contract is prepaid.

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

12 Sec. 5. (1) A retail installment transaction negotiated and
 13 entered into by mail or telephone without personal solicitations by
 14 a salesperson or other representative of the seller and based ~~upon~~
 15 **on** a catalog of the seller, or other printed solicitation ~~which~~
 16 **that** clearly sets forth the cash sale prices and other terms of
 17 sales to be made through the medium may be made as provided in this
 18 section. The provisions of this act with respect to a retail
 19 installment transaction ~~shall be~~ **are** applicable to the sale, except
 20 ~~that:~~ **as follows:**

21 (a) The designation and notice provisions of sections ~~3(a)~~
 22 **3(2)** and 12(a) ~~shall be~~ **are** not ~~be~~ applicable to the retail
 23 installment contract or retail charge agreement.

24 (b) The retail installment contract or retail charge
 25 agreement, when completed by the buyer, **does not** need ~~not to~~
 26 contain the items required by section ~~3(d)~~ **3(5)** or 12(a). When the
 27 retail installment contract or retail charge agreement is received
 28 from the retail buyer, the seller shall either prepare a written
 29 memorandum containing all of the information required by section

1 ~~3(d)~~**3(5)** to be included in a retail installment transaction or
 2 shall deliver a copy of the retail charge agreement to the retail
 3 buyer as provided in section 12(a) ~~prior to~~**before** the due date of
 4 the first installment or payment payable under the contract or
 5 agreement.

6 (2) When the retail installment contract or retail charge
 7 agreement is received from the retail buyer, the seller shall
 8 prepare a written memorandum containing all of the information
 9 required by sections ~~3(d)~~**3(5)** and 12(a) to be included in a retail
 10 installment transaction. Instead of delivering a copy of the
 11 contract or agreement to the retail buyer as provided in sections
 12 ~~3(b)~~**3(3)** and 12(a), the seller shall deliver to the buyer a copy
 13 of the memorandum ~~prior to~~**before** the due date of the first
 14 installment or payment payable under the contract or agreement.

15 Sec. 6. A retail installment contract ~~shall~~**must** not be signed
 16 by any party ~~thereto~~**of the contract** when it contains blank spaces
 17 of items which are essential provisions of the transaction, but if
 18 delivery of the goods is not made at the time of the execution of
 19 the contract, the identifying numbers or marks of the goods or
 20 similar information and the due date of the first installment may
 21 be inserted by the seller in the seller's counterpart of the
 22 contract after it has been signed by the buyer. The buyer's
 23 acknowledgment, conforming to the requirement of ~~subsection (b) of~~
 24 section ~~3,~~**3(3)**, of delivery of a copy of the contract ~~shall~~**must**
 25 be presumptive proof, or, in the case of a holder of the contract
 26 without knowledge to the contrary when ~~he~~**the holder** purchases it,
 27 conclusive proof of ~~such~~**the** delivery and of compliance with this
 28 subsection and any other requirement relating to completion of the
 29 contract ~~prior to~~**before** execution ~~thereof~~**of the contract** by the

1 buyer, in any action or proceeding.

2 Sec. 11. **(1)** ~~(a)~~—If, in a retail installment transaction, a
 3 retail buyer purchases goods or services from a retail seller from
 4 whom ~~he or she~~ **the retail buyer** has previously purchased goods or
 5 services under 1 or more retail installment contracts, and the
 6 amounts under the previous contracts have not been fully paid, the
 7 subsequent purchases may be included in and consolidated with 1 or
 8 more of the previous contracts at the seller's option. Each
 9 subsequent purchase ~~shall be~~ **is** a separate retail installment
 10 contract under this act, notwithstanding that the purchase may be
 11 included in and consolidated with 1 or more previous contracts. ~~All~~
 12 **Except as otherwise provided in this section**, the provisions of
 13 this act with respect to retail installment contracts apply to
 14 subsequent purchases. ~~except as otherwise provided in this section.~~

15 **(2)** ~~(b)~~—In the event of consolidation, if the buyer does not
 16 execute a retail installment contract respecting each subsequent
 17 purchase as provided in this act, the seller may prepare a written
 18 memorandum of each subsequent purchase and the provisions of
 19 section 3 do not apply. Unless previously furnished in writing to
 20 the buyer by the seller, by sales slip, memorandum, or otherwise,
 21 the memorandum ~~shall~~ **must** contain **the** items ~~(1) to (8) of in~~
 22 section ~~3(d)~~ **3(5)(a) to (h)** and the outstanding balance of the
 23 previous contract or contracts, the consolidated time balance, and
 24 the revised installments applicable to the consolidated time
 25 balance, if any. The seller shall deliver to the buyer a copy of
 26 the memorandum ~~prior to~~ **before** the due date of the first
 27 installment of the consolidated contract.

28 **(3)** ~~(c)~~—When subsequent purchases are made, if the seller has
 29 retained title or taken a lien or other security interest in any of

1 the goods purchased under any 1 of the contracts included in the
 2 consolidation, the entire amount of all payments made ~~prior to~~
 3 **before** the subsequent purchases are considered to have been applied
 4 to the unpaid time balances of the previous purchases. Each payment
 5 after the subsequent purchase made on the consolidated contract
 6 ~~shall be is~~ considered to have been allocated to all of the various
 7 purchases in the same ratio as the original cash sale prices of the
 8 various purchases bear to the total of all. ~~Where~~ **If** the amount of
 9 each installment payment is increased in connection with subsequent
 10 purchases, at the seller's option, the subsequent payments may be
 11 considered to be allocated as an amount equal to the original
 12 periodic payment to the previous purchase, the balance to the
 13 subsequent purchase. The amount of a down payment on the subsequent
 14 purchase ~~shall must~~ be allocated in its entirety to the subsequent
 15 purchase. This subsection does not apply if the previous and
 16 subsequent purchases involve equipment, parts or other goods
 17 attached or affixed to goods previously purchased and not fully
 18 paid, or to services rendered by the seller at the buyer's request.

19 **(4)** ~~(d)~~ ~~(1)~~ The holder of a retail installment contract, upon
 20 agreement in writing with the buyer, may extend the scheduled due
 21 date or defer the scheduled payment of all or of any part of any
 22 installment or installments payable under the contract. A minimum
 23 charge of \$1.00 for the period of extension or deferral may be made
 24 in any case where the extension or deferral charge, when computed
 25 at the rate ~~permitted~~ a regulated lender ~~by~~ **may use under** the
 26 credit reform act, **1995 PA 162, MCL 445.1851 to 445.1864**, amounts
 27 to less than \$1.00. The agreement may also provide for the buyer's
 28 payment of the additional cost to the holder of the contract of
 29 premiums for continuing in force until the end of the period of

1 extension or deferral any insurance coverage provided for in the
 2 contract. The extension or deferral ~~shall~~**must** be confirmed in
 3 writing by the holder.

4 **(5)** ~~(2)~~—The holder of a retail installment contract, upon
 5 agreement in writing with the buyer, may refinance the payment of
 6 the unpaid time balance of the contract by providing for a new
 7 schedule of installment payments. The holder may charge and
 8 contract for the payment of a refinance charge by the buyer and
 9 collect and receive the refinance charge, but the refinance charge
 10 ~~shall~~**must** be based ~~upon~~**on** the amount refinanced, plus any
 11 additional cost of insurance and of official fees incident to the
 12 refinancing, after the deduction of a refund or credit in an amount
 13 equal to that to which the buyer would have been entitled under
 14 section 8, if ~~he or she~~**the buyer** had prepaid in full ~~his or her~~
 15 **the buyer's** obligations under the contract or contracts, computed
 16 without allowance for any minimum earned finance charge. The
 17 refinance charge ~~shall~~**must** not exceed the rate of interest or its
 18 equivalent permitted a regulated lender by the credit reform act,
 19 **1995 PA 162, MCL 445.1851 to 445.1864**. The refinancing agreement
 20 ~~shall~~**must** set forth the amount of the unpaid time balance to be
 21 refinanced, the amount of any refund credit, the amount to be
 22 refinanced after the deduction of the refund credit, any additional
 23 premiums paid for insurance and of official fees to the buyer, the
 24 amount of the finance charge under the refinancing agreement, the
 25 new unpaid time balance, and the new schedule of installment
 26 payments.

27 Enacting section 1. This amendatory act does not take effect
 28 unless Senate Bill No.____ or House Bill No. 5354 (request no.
 29 03158'23) of the 102nd Legislature is enacted into law.