



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/04/04, by Marlow H. Colvin, David E. Miller,
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SYNOPSIS AS INTRODUCED:

815 ILCS 375/2.16 new	
815 ILCS 375/2.17 new	
815 ILCS 375/5	from Ch. 121 1/2, par. 565
815 ILCS 375/23	from Ch. 121 1/2, par. 583
815 ILCS 505/2Z	from Ch. 121 1/2, par. 262Z

Amends the Motor Vehicle Retail Installment Sales Act. Provides that there is an affirmative obligation and duty to disclose to an obligor under a retail installment contract: (i) any agreement to sell, assign, or otherwise transfer the contract to a third party for an amount that is equal to, in excess of, or less than the amount financed under the contract, (ii) that the assignee may pay the seller all or a portion of the prepaid finance charges and other fees, and (iii) the applicable buy rate, annual percentage rate, and yield spread premium. Deletes a provision concerning a violation of the Act, and adds a provision making a violation of the Act an unfair and deceptive act or practice in violation of the Consumer Fraud and Deceptive Business Practices Act (and amends the Consumer Fraud and Deceptive Business Practices Act accordingly). Makes other changes.

LRB093 20593 RXD 46412 b

1 AN ACT concerning business transactions.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Motor Vehicle Retail Installment Sales Act
5 is amended by changing Sections 5 and 23 and by adding Sections
6 2.16 and 2.17 as follows:

7 (815 ILCS 375/2.16 new)

8 Sec. 2.16. Buy rate. "Buy rate" means the minimum annual
9 percentage rate that is communicated to the retail seller, at
10 which a sales finance agency offers to finance a retail buyer's
11 motor vehicle.

12 (815 ILCS 375/2.17 new)

13 Sec. 2.17. Yield spread premium. "Yield spread premium"
14 means any form of compensation received by the retail seller
15 for executing a retail installment contract with a retail buyer
16 with an annual percentage rate in excess of the buy rate.

17 (815 ILCS 375/5) (from Ch. 121 1/2, par. 565)

18 Sec. 5. Every retail installment contract shall disclose
19 the following items, as applicable:

20 (1) The cash price of the motor vehicle, using the term
21 "cash price".

22 (2) The amount of the down payment itemized, as applicable,
23 as down payment in money, using the term "cash down payment",
24 down payment in property, using the term "trade-in" and the
25 sum, using the term "total down payment".

26 (3) The difference between the amounts described in
27 subparagraphs (1) and (2) of this paragraph, using the term
28 "unpaid balance of cash price".

29 (4) All other charges, individually itemized, which are
30 included in the amount financed but which are not part of the

1 finance charge.

2 (5) The sum of the amounts determined under subparagraphs
3 (3) and (4) of this paragraph, using the term "unpaid balance".

4 (6) Any finance charge paid separately, in cash or
5 otherwise, directly or indirectly to the seller or with the
6 seller's knowledge to another person, or withheld by the seller
7 from the proceeds of the credit extended and any deposit
8 balance or any investment which the seller requires the buyer
9 to make, maintain, or increase in a specified amount or
10 proportion as a condition to the extension of credit, using as
11 applicable, the terms "prepaid finance charge" and "required
12 deposit balance", and if both are applicable, the total of such
13 items using the term "total prepaid finance charge and required
14 deposit balance".

15 (7) The difference between the amounts determined under
16 subparagraphs (5) and (6) of this paragraph, using the term
17 "amount financed".

18 (8) The total amount of the finance charge, with
19 description of each amount included, using the term "finance
20 charge".

21 (9) The sum of the amounts determined under subparagraphs
22 (1), (4), and (8) of this paragraph, using the term "deferred
23 payment price".

24 (10) The finance charge expressed as an annual percentage
25 rate, using the term "annual percentage rate".

26 (11) The number, amount, and due dates or periods of
27 payments scheduled to repay the indebtedness and the sum of
28 such payments using the term, "total of payments". If
29 installment payments are stated in terms of a series of
30 scheduled amounts and if the amount of the final installment
31 payment does not exceed the scheduled amount of any preceding
32 installment payment, the maximum number of payments and the
33 amount and date of each payment need not be separately stated
34 and the amount of the scheduled final installment payment may
35 be stated as the remaining unpaid balance. The due date of the
36 first installment payment may be fixed by a calendar date, by

1 reference to the date of the contract or by reference to the
2 date of delivery or installation of the goods.

3 (12) The amount, or method of computing the amount, of any
4 default, delinquency, or similar charges payable in the event
5 of late payments.

6 (13) A description or identification of the type of any
7 security interest held or to be retained or acquired by the
8 seller in connection with the extension of credit, and a clear
9 identification of the property to which the security interest
10 relates.

11 (14) A description of any penalty charge that may be
12 imposed by the seller or his assignee for prepayment of the
13 principal of the obligation with an explanation of the method
14 of computation of such penalty and the conditions under which
15 it may be imposed.

16 (15) Identification of the method of computing any unearned
17 portion of the finance charge in the event of prepayment of the
18 obligation and a statement of the amount or method of
19 computation of any charge that may be deducted from the amount
20 of any rebate of such unearned finance charge that will be
21 credited to the obligation or refunded to the buyer.

22 (16) The date on which the finance charge begins to accrue
23 if different from the date of the transaction.

24 (17) Additionally, there is an affirmative obligation and
25 duty to disclose to an obligor under a retail installment
26 contract: (i) any agreement to sell, assign, or otherwise
27 transfer the contract to a third party for an amount which is
28 equal to, in excess of, or less than the amount financed under
29 the contract, (ii) that the assignee of the contract or the
30 person who funded it may pay the seller or the person who
31 originated the contract all or a portion of the prepaid finance
32 charges and other fees or a portion of the finance charge to be
33 paid by the buyer over the term of the transaction or any other
34 compensation irrespective of how the compensation is
35 determined, and (iii) the following in bold and in at least
36 10-point font, "THE BUY RATE FOR THIS TRANSACTION IS (fill in

1 applicable buy rate), THE ANNUAL PERCENTAGE RATE CHARGED TO THE
2 RETAIL BUYER IS (fill in applicable annual percentage rate),
3 THE COMMISSION EARNED BY THE RETAIL SELLER FOR ARRANGING
4 FINANCING FOR THE RETAIL BUYER IS (fill in applicable yield
5 spread premium)."

6 The disclosures required to be given by this Section shall
7 be made clearly, conspicuously and in meaningful sequence.
8 Where the terms "finance charge", "buy rate", "yield spread
9 premium", and "annual percentage rate" are required to be used,
10 they shall be printed more conspicuously than other terminology
11 required.

12 With the exception of the additional disclosure
13 requirements of subdivision (17) of this Section, a A retail
14 installment contract which complies with the federal Truth in
15 Lending Act, amendments thereto, and any regulations issued or
16 which may be issued thereunder, shall be deemed to be in
17 compliance with the provisions of this Section.

18 ~~Notwithstanding any other provision of this Act or any~~
19 ~~other law of this State, there is no obligation or duty to~~
20 ~~disclose to an obligor under a retail installment contract: (i)~~
21 ~~any agreement to sell, assign, or otherwise transfer the~~
22 ~~contract to a third party for an amount which is equal to, in~~
23 ~~excess of, or less than the amount financed under the contract;~~
24 ~~or (ii) that the assignee of the contract or the person who~~
25 ~~funded it may pay the seller or the person who originated the~~
26 ~~contract all or a portion of the prepaid finance charges and~~
27 ~~other fees or a portion of the finance charge to be paid by the~~
28 ~~buyer over the term of the transaction or any other~~
29 ~~compensation irrespective of how the compensation is~~
30 ~~determined.~~

31 (Source: P.A. 90-437, eff. 1-1-98.)

32 (815 ILCS 375/23) (from Ch. 121 1/2, par. 583)

33 Sec. 23. A violation of this Act is an unfair and deceptive
34 act or practice in violation of the Consumer Fraud and
35 Deceptive Business Practices Act. ~~The Attorney General or the~~

~~State's Attorney of any county in this State may bring an action in the name of the State against any person to restrain and prevent any violation of this Act. In the enforcement of this Act the Attorney General or the State's 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, that act or practice. Failure to perform the terms of any such assurance constitutes prima facie proof of a violation of this Act.~~

(Source: Laws 1967, p. 2163.)

Section 10. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2Z as follows:

(815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

Sec. 2Z. Violations of other Acts. Any person who knowingly violates the Motor Vehicle Retail Installment Sales Act, the Automotive Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, or paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code commits an unlawful practice within the meaning of this Act.

(Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04.)