

follows that the use of the earmarked appropriation for the payment of the cash awards of the suggestion awards program to employees of other departments would be for the purpose of exercising a power vested in the Commission by the Constitution. Therefore, your second question is answered in the affirmative.

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INSTALLMENT SALES:

The practice by certain retailers of charging the buyer with the "time price differential" (service charge) on the beginning monthly balance rather than the unpaid balance is illegal. The Michigan retail installment sales act requires that the "time price differential" (service charge) charged to the buyer be computed on the principal remaining unpaid after deduction of payments during the preceding period.

No. 4706

August 11, 1970.

Representative Thomas Guastello
House of Representatives
Capitol Building
Lansing, Michigan

In the following terms you have requested my opinion relative to certain widespread practices as they relate to the Michigan retail installment sales act:¹

"Specifically, I would like to know whether the practice, common to several large retailers in this state, of charging a 'time price differential' based on the customer's beginning balance every month, is legal under the provisions of the above statute.

"Does this practice violate those provisions calling for a time price differential to be assessed against ' . . . amounts unpaid thereunder from month to month . . . ?' (CL 445.862c)

"Does this practice violate either the maximum interest provisions of the Retail Installment Sales Act or the state usury laws?"

Stated in simplified hypothetical terms, your question can be posed as follows:

Suppose a consumer with a credit charge account purchases an item on the first day of the month for \$100.00 and makes no other purchase on his account for the remainder of that month. On the next month's billing date, this consumer receives a monthly statement showing a balance due of \$100.00 payable within 25 days. He thereupon makes a partial payment

¹ Act 224, P.A. 1966; M.C.L.A. § 445.851 et seq.; M.S.A. 1970 Cum. Supp. § 19.416(101) et seq.

of \$60.00 within the 25 day period. On the next succeeding month's billing date, he receives a monthly statement depicted as follows:

Previous balance	\$100.00
Less credits and payments	\$ 60.00
New balance	\$ 41.50
Service charge	\$ 1.50 ²

The result is that the consumer has paid a service charge (or "time price differential") on the beginning balance of \$100.00 rather than on the unpaid balance of \$40.00.

In contrast, had the service charge ("time price differential") been computed on the unpaid balance, the statement would have been depicted as follows:

Previous balance	\$100.00
Less credits and payments	\$ 60.00
New balance	\$ 40.60
Service charge	\$.60

Thus, in this hypothetical instance, a service charge of \$1.50 on an unpaid balance of \$40.00 results in payment of 3.75% per month or 45% per annum, whereas payment of \$.60 under the same circumstances results in payment of 1.5% per month or 18% per annum. In other examples, using different partial payments, the resultant per annum percentage of the service charge would vary, but it would always exceed the charge that would have been made if the consumer had been given credit for his partial payment.

The retail installment sales act was enacted to regulate retail installment sales transactions, agreements and disclosures. Section 2 of the act³ provides:

"Retail charge agreement' means an instrument prescribing the terms of retail installment transactions whether secured or unsecured which may be made thereunder 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.*

"Time price differential' means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It 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.

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

² Use is made here of 1 ½% per month or 18% per annum which is the customary rate although the retail installment sales act permits 1.7% per month as the maximum charge. (Section 12(c))

³ M.C.L.A. § 445.852 (h), (i), (m); M.S.A. 1970 Cum. Supp. § 19.416(102) (h), (i), (m).

Section 12⁴ provides in pertinent part:

“(b) The buyer under the retail charge agreement shall promptly be supplied with a statement as of the end of each monthly period, which need not be a calendar month, or other regular period agreed upon in writing, at the end of which there is any *unpaid balance* thereunder, which statement shall recite 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, 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 such period.

“(5) A statement to the effect that the buyer at any time may pay his total *unpaid balance* or any part thereof.

“(c) A retail charge agreement may provide for, and the seller or holder may then, notwithstanding the provisions of any other law, charge, collect and receive a time price differential for the privilege of paying in installments thereunder, in an amount not exceeding 1.7% of the *unpaid balance* per month. The time price differential under this subsection shall be computed on all amounts unpaid thereunder from month to month, which need not be calendar months, or other regular periods; but if the regular period is other than a monthly period or if the unpaid amount is less than or greater than \$10.00, the time price differential may be computed proportionately. The time price differential may be computed for all *unpaid balances* within a range of not in excess of \$10.00 on the basis of the median amount within such range if as so computed such time price differential is applied to all *unpaid balances* within such range. A minimum time price differential not in excess of 70 cents per month may be charged, received and collected.” (emphasis added)

The general principles governing construction of statutes are that the intention of the legislature be ascertained and given effect⁵ and that any construction given must carry out the general purpose of the act.⁶

The underlying purpose of retail installment sales acts is to protect unknowledgeable and unwary buyers from oppressive business practices⁷ and to protect purchasers against excessive charges⁸ although, additionally, the act places a burden upon the seller to inform the buyer in writing of the finance charges.

⁴ M.C.L.A. § 445.862; M.S.A. 1970 Cum. Supp. § 19.416(112).

⁵ *Detroit Edison Co. v. Dept. of Revenue* (1948), 320 Mich. 506.

⁶ *Consumer Power Co. v. Corporation and Securities Commission* (1950), 326 Mich. 643.

⁷ *Associated Acceptance Corp. v. Bailey* (Md., 1961), 174 A2d 440.

⁸ *General Motors Acceptance Corp. v. Kyle* (Cal., 1960), 351 P2d 768, 770.

The act, therefore, serves the same function as a usury law as to which the Michigan supreme court has said:

“ * * * [Its purpose is] to protect the necessitous borrower from extortion. In the accomplishment of this purpose a court must look squarely at the real nature of the transaction, thus avoiding, so far as lies within its power, the betrayal of justice by the cloak of words, the contrivances of form, or the paper tigers of the crafty. We are interested not in form or color but in nature and substance.”⁹ (page 504)

Turning, therefore, to your specific inquiry, the retail seller in the example cited thus charges a time price differential on the “previous balance” which may or may not be considered the balance remaining unpaid. Thus, we must look to the meaning of the term “unpaid balance” as profusely used in Section 12 of the act.

In *San Luis Valley Building & Loan Ass'n. v. Holbert* (Colo., 1920), 190 P 428, the parties entered into a contract for the sale of land calling for payment of equal monthly installments in payment of both principal and interest upon the unpaid part of the purchase price. It was contended by the creditor that the terms of the agreement should be interpreted so as to compute the monthly interest on the principal. The court rejected this contention noting:

“The contract must be construed as a whole, and no unreasonable intent should be imputed to the parties. It would require very clear and express provisions in such a contract to justify the conclusion that the vendee agreed to pay 8 per cent interest on the principal sum, regardless of the amount by which it had been reduced. In the paragraph quoted it is agreed that the \$176.66 $\frac{2}{3}$ per month is, in part, in payment of ‘interest on the unpaid part of the purchase price.’ The unpaid part of the price, which is to be the basis for computing the interest, is that price, less the total paid thereon.”

Also, in *Morgan Motor & Finance Co. v. Oliver* (Utah, 1942), 124 P2d 778, the court explained that if the term “unpaid balance” were to include any portion of the purchase price that had been paid, it would lead to the inconsistent result of requiring the purchaser to pay for interest or forbearance on money which is not owed. The court noted that “there is no forbearance of that part of the purchase price which is paid at the time or before the contract is signed.” (p. 781)

It is clear that if a debtor makes a partial payment in advance and is nevertheless required to pay interest on the principal amount without deduction of the prepayment, he is in effect paying a higher rate of interest. See *Hillman's v. Em 'N Al's* (1956), 345 Mich. 644, in which the Michigan supreme court quoted with approval the following statement from 66 CJ, “Usury,” § 125, p. 205:

“Where the principal sum of a loan or debt is made payable in instalments at specified intervals within the full period of the loan, but interest for the full period on the whole principal sum is agreed

⁹ *Wilcox v. Moore* (1958), 354 Mich. 499.

to be paid, or is taken or withheld by the lender in advance, or is included in the face amount of the note, the transaction is usurious, whether or not the rate of interest stipulated in the contract exceeds the maximum specified by law, if the sum so agreed to be paid or so deducted as interest is greater than interest at the lawful rate on the principal sum for the period for which it is actually lent." (emphasis added)

The application of this principle to the question at hand is apparent. The retail installment sales act prohibits a retail seller from charging a time price differential in excess of 1.7% of the unpaid balance per month. In order to determine the unpaid balance upon which this rate is to be applied, the seller must deduct all prepayments and credits during the preceding period for to do otherwise would cause the time price differential to exceed the maximum rate allowed by law.

It is therefore my opinion that the retail installment sales act requires that the time price differential be computed on the principal balance remaining unpaid after deduction of payments during the preceding period.

It is also necessary to consider the application of Public Law 90-321, commonly referred to as the Federal Truth in Lending Act¹⁰ since Section 1a of the Michigan retail installment sales act, *supra*, as added by Act 31, P.A. 1969, provides as follows:

"Compliance with the requirement of the consumer credit protection act, Public Law 90-321; 82 statute 146, et seq., commonly referred to as the federal truth in lending act is compliance with the disclosure provisions of subsection (d) of section 3 and subsection (b) of section 12."

It is noted that Section 3 (d) of the Michigan retail installment sales act relates to disclosure within the retail installment contract and Section 12 (b) relates to disclosure in retail charge agreements. Section 1a of the Michigan retail installment sales act makes no reference to Section 12(c) which is at issue here.

The purpose of the Federal Truth in Lending Act, *supra*, is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit."¹¹

It is abundantly clear that there is a vast difference between *disclosure* of the unpaid balance of the purchase price, less credits, and the *time price differential* (service charge) upon the unpaid balance. The Truth in Lending Act as interpreted by regulation Z of the Board of Governors of the Federal Reserve System¹² refers to inconsistent state laws but deals only with disclosure requirements.

A federal law, enacted pursuant to congressional powers, supersedes state legislation on the same matter, except (1) where congress leaves a

¹⁰ 82 Stat. 146; 15 U.S.C.A. § 1601, et seq.

¹¹ 15 U.S.C.A. § 1601.

¹² Truth in Lending, Regulation Z, 12 CFR 226, (1969).

part open to state regulation,¹³ (2) the federal legislation does not cover the same field, or (3) is consistent with state legislation.¹⁴

Section 111¹⁵ of the Truth in Lending Act states in part:

“(a) This subchapter does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter or regulations thereunder, and then only to the extent of the inconsistency.

“(b) This subchapter does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this subchapter extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.”

It is thus clear congress did not intend to affect or otherwise preempt state laws relating to maximum rates nor their method of computation, but only disclosure requirements where they are inconsistent with federal law.

It is therefore my opinion that federal law does not annul, alter, or affect the Michigan retail installment sales act as it relates to maximum rates, methods of computation, prohibited contract provisions, assignments, and other like provisions, and thus all retail charge sellers must comply with the Michigan law in those respects.

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Attorney General.

¹³ *Gilvary v. Cuyahoga Valley R. Co.*, 292 U.S. 57, 54 S.Ct. 573, 78 L.ed. 1123.

¹⁴ *Hartford Accident & Indemnity Co. v. Illinois*, 298 U.S. 155, 56 S.Ct. 685, 80 L.ed. 1099.

¹⁵ 15 U.S.C.A. § 1610.