

No. 464

AN ACT

Defining and regulating home improvement installment contracts for the modernization, rehabilitation, repair, alteration or improvement upon or in connection with real property; prescribing the requirements of such contracts and limitations on the enforcement thereof; conferring powers and imposing duties upon the courts of common pleas, the Attorney General and district attorneys, and providing remedies and penalties.

Home Improve-  
ment Finance  
Act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I.

SHORT TITLE AND DEFINITIONS.

Section 101. Short Title.—This act shall be known and may be cited as the “Home Improvement Finance Act.”

Section 102. Definitions.—The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates otherwise:

(1) “Banking institution” means any bank, bank and trust company, trust company, savings bank, private bank or any national banking association, organized and doing business under the provisions of any law of this Commonwealth, or of any other state of the United States, or under the provisions of any law of the United States of America.

(2) “Cash price” means the cash sales price stated in a home improvement installment contract for which the contractor would sell \*or furnish to the buyer and the buyer would buy or obtain from the contractor the goods and services which are the subject matter of such contract, if the sale were a sale for cash, instead of a home improvement installment sale, and may include any taxes.

(3) “Collateral” means any real or personal property subject to any pledge, security interest, mortgage, encumbrance, judgment or other lien which secures the performance of any obligation of the buyer, or any surety or guarantor for the buyer, under a home improvement installment contract or any extension, deferment, renewal or other revision thereof.

(4) “Down payment” means the amounts paid in money and in goods to the home improvement contractor and all allowances given by the home improvement contractor to the buyer prior to or substantially con-

\* “for” in original.

temporaneous with the execution of a home improvement installment contract.

(5) "Finance charge" whether expressed as such or as "credit service charge," "service charge," "time price differential" or the like, means that amount by which the time sale price exceeds the aggregate of the cash price and the amounts, if any, included for insurance premiums and official fees.

(6) "Financing agency" means a person other than a home improvement contractor engaged, directly or indirectly, as principal, agent or broker in the business of purchasing, acquiring, financing, soliciting or arranging for the financing or acquisition of home improvement installment contracts or any obligation in connection therewith: Provided, That the term shall not include any person to the extent that he makes bona fide commercial loans to contractors or financing agencies and takes assignments of, or an interest in, an aggregation of such contracts only as security for such commercial loans under which, in the absence of default or other bona fide breach of the loan contract, ownership of such contracts remains vested in the assignor and collection of payments on such contracts is made by the assignor.

(7) "Goods" means all chattels personal which are furnished or used in the modernization, rehabilitation, repair, alteration or improvement of real property, but not including the construction of new homes.

(8) "Holder" means any person, including a contractor, who is currently entitled to the rights of a contractor under a home improvement installment contract.

(9) "Home improvement contractor" or "contractor" means a person who sells goods and services, or agrees to furnish or render services, to a retail buyer pursuant to a home improvement installment contract, but not including the construction of new homes.

(10) "Home improvement installment contract" or "contract" means an agreement covering a home improvement installment sale, whether contained in one or more documents, together with any accompanying promissory note or other evidence of indebtedness, to be performed in this Commonwealth pursuant to which the buyer promises to pay in installments all or any part of the time sale price or prices of goods and services, or services. The meaning of the term does not include such an agreement, if (i) it pertains to real property used for a commercial or business purpose; or (ii) it covers the sale of goods by a person who neither directly nor indirectly performs or arranges to perform any services in connection with the installation of or application of the goods; or (iii) it covers only an appliance

designed to be freestanding and not built into and permanently affixed as an integral part of the structure such as a stove, freezer, refrigerator, air conditioner, other than one connected with a central heating system, hot water heater and the like; or (iv) it covers the sale of goods and the furnishing of services or the furnishing of services thereunder for a cash price stated therein of three hundred dollars (\$300) or less; or (v) the loan is contracted for or obtained directly by the retail buyer from the lending institution, person or corporation.

(11) "Home improvement installment sale" or "sale" means the sale of goods and furnishing of services or the furnishing of services by a contractor to a retail buyer pursuant to a home improvement installment contract wherein the cash price is stated to be in excess of three hundred dollars (\$300).

(12) "Official fees" means the fees required by law to be and actually paid to the appropriate public officer for obtaining any permit or filing or recording or releasing any judgment, mortgage or other lien or perfecting any security interest taken or reserved as security in connection with a home improvement installment contract.

(13) "Person" means an individual, partnership, association, business corporation, banking institution, nonprofit corporation, common law trust, joint stock company, or any other group of individuals, however organized.

(14) "Principal amount financed" means the cash price of the goods and services which are the subject matter of the home improvement installment sale minus the amount of the buyer's down payment, plus the amounts, if any, included for insurance and official fees.

(15) "Retail buyer" or "buyer" means a person who buys goods and services, or services from a contractor pursuant to a home improvement installment contract.

(16) "Services" means work, labor and services furnished in connection with the installation or application of goods in the modernization, rehabilitation, repair, alteration or improvement of real property, but not including the construction of new homes.

(17) "Time balance" means the sum of the principal amount financed and the finance charge.

(18) "Time sale price" means the total of the cash price of the goods and services or services, the finance charge and the amounts, if any, included for insurance premiums and official fees.

## ARTICLE II.

## CONTRACT REQUIREMENTS AND PROHIBITIONS.

Section 201. Written Contract; Date; Eight Point Type.—A home improvement installment contract shall be dated and in writing; the printed portion thereof shall be in at least eight point type.

Section 202. Contract Contents; Notice to Buyer.—Every home improvement installment contract shall contain:

(a) The entire agreement of the parties with respect to the goods and services.

(b) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "Home Improvement Installment Contract" shall appear in at least ten point bold type.

(c) A notice in at least eight point bold type reading as follows: "Notice to Buyer: (1) Do not sign this contract before you read it. (2) You are entitled to a completely filled-in copy of this contract. (3) Under the law, you have the right to pay off in advance the full amount due and, under certain conditions, to obtain a partial refund of the finance charge. (4) You may rescind this contract, subject to liability for any liquidated damage provision thereof authorized by law, not later than five P. M. on the business day following the date thereof by giving written notice of rescission to the contractor at his place of business given in the contract," but if you rescind after five P. M. on the business day following, you are still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.

Section 203. Mandatory Contract Items.—Except as provided in sections 306, 307 and 308 of this act, a home improvement installment contract shall contain the following:

(a) The name of the contractor, the place of business of the contractor, the name and address of the buyer as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.

(b) The cash price of the goods and services which are the subject matter of the sale.

(c) The amount of the buyer's down payment, itemizing any allowances given by the contractor, amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(d) The unpaid cash balance which is the difference between item (b) and item (c).

(e) The premium paid for each type of any insurance included in the contract for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.

(f) The amount of official fees, if any.

(g) The principal amount financed, which is the sum of items (d), (e) and (f).

(h) The amount of the finance charge expressed in dollars.

(i) The time balance, which is the sum of items (g) and (h), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(j) The time sale price.

(k) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in ten point bold type or typewritten and underlined: This contract is not payable in installments of equal amounts. Followed, if there be but one larger installment, by: An installment of \$..... will be due on ....., or if there be more than one larger installment, by: Larger installments will be due as follows: ..... (Insert the amount or amounts of every larger installment and its due date).

(l) This contract, subject to liability for any liquidated damage provision thereof authorized by law, may be rescinded by the buyer not later than five P. M. on the business day following the date thereof by giving written notice of rescission to the contractor at his place of business given in this contract, but if you rescind after five P. M. on the business day following, you are still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computation made in determining the amount to be paid by the buyer. The contract need not make any reference to item (e) or item (f) if a charge for the item is not included in the contract.

Section 204. Contract Copy to Buyer; Acknowledgment.—The contractor shall deliver to the buyer, or mail to him, at his address shown on the home improvement installment contract, an executed copy thereof completed in accordance with the provisions of this act. Until

the contractor does so, the buyer shall be obligated to pay only the cash price. Any acknowledgment by the buyer of the delivery of a copy of the contract shall be printed or written in a size equal to at least ten point bold type and, if contained in the contract, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section of delivery of a copy of a contract, shall be presumptive evidence of such delivery and of compliance with this section in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

Section 205. Insurance.—If the premium paid for any group credit life or other insurance is included in the home improvement installment contract and a separate charge is made to the buyer for such insurance:

(a) The contract shall state whether the insurance is to be procured by the buyer or the contractor.

(b) The amount, if any, included for such insurance, shall not be in excess of rates established in the then current published applicable manual of a recognized standard insurance rating bureau, or the rates fixed or approved by authority of the Commonwealth of Pennsylvania. If any such group credit life or other insurance is cancelled, the refund for unearned insurance premiums received or receivable by the holder of the contract, or the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract therefor, together with, in either case, the unearned portion of the finance charge applicable thereto, shall be credited to the final maturing installments of the contract, provided that no such credit need be made if the amount thereof would be less than one dollar.

(c) If the insurance is to be procured by the contractor or holder, he shall, within thirty days after delivery of the goods and furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his address, as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

Section 206. Provisions Expressly Prohibited.—No home improvement installment contract shall contain any provision by which:

(a) The buyer agrees not to assert against a contractor a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in section 208.

(b) In the absence of the buyer's default in the performance of any of his obligations, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder.

(c) The buyer waives any right of action against the contractor or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract.

(d) The buyer relieves the contractor from liability for any legal remedies which the buyer may have against the contractor under the contract or any separate instrument executed in connection therewith.

(e) The contractor or holder, or any person acting on behalf of the contractor or holder, is authorized to enter upon the premises of the buyer unlawfully.

(f) The seller is entitled to liquidated damages in an amount which exceeds ten per cent of the cash price stated in the contract in the event of the buyer's failure or refusal to accept delivery of the goods or performance of the services covered by the contract.

Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract.

Section 207. Promissory Notes.—(a) No home improvement installment contract shall require or entail the execution of any note or series of notes by the buyer which, when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the contractor.

(b) The contract may require or entail the execution of a promissory note but only if it bears on the same side of the note as contains the maker's signature, the following legend in at least ten point bold type: "Payment of this note is subject to the terms of a home improvement installment contract of even date between maker and payee." No such note may be negotiated or otherwise transferred without simultaneous delivery of the related contract.

Section 208. Buyer's Defense Cut Off by Assignment; Notice of Assignment.—No right of action or defense arising out of the transaction which gave rise to the home improvement installment contract which the buyer has against the contractor, and which would be cut off by assignment, shall be cut off by assignment of the contract to any third person whether or not he acquired the contract in good faith and for value unless the assignee gives notice of the assignment to the buyer as provided in this section and within fifteen days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A

notice of assignment shall be in writing addressed to the buyer at his address shown on the contract and shall indicate or contain: The name and address of the assignee, the names of the contractor and the buyer and a description of the goods and services which are the subject matter of the contract, the time balance of the contract, the number and amount of installments in which the time balance is payable and the due date or period thereof, together with the following legend printed or written in a size equal to at least eight point bold type: Notice:

1. If the within statement of your transaction with the contractor is not correct in every respect; or
2. If the goods and services described in or in an enclosure with this notice have not been delivered and satisfactorily performed by the contractor; or
3. If the contractor has not fully performed all his agreements with you, you must notify the assignee in writing at the address indicated in or in an enclosure with this notice within fifteen days from the date of the mailing of this notice; otherwise, you will have no right to assert against the assignee any right of action or defense arising out of the sale which you might otherwise have against the contractor.

Section 209. Delinquency and Collection Charges; Court Costs and Attorney's Fees.—A home improvement installment contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of not less than ten days in an amount not in excess of five per cent of such installment or five dollars (\$5), whichever is less: Provided, That only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default. A contract may also provide for the payment of court costs actually incurred and of attorney's fees not exceeding twenty per cent of the amount due and payable under such contract if it is referred to an attorney not a salaried employe of the contractor or holder for collection.

### ARTICLE III.

FINANCE CHARGE LIMITATIONS; PREPAYMENTS;  
EXTENSIONS; REFINANCING AND CONSOLIDATIONS;  
ADD-ON SALES.

Section 301. Finance Charge Limitation.—(a) The maximum finance charge included in a home improvement installment contract payable in substantially equal successive monthly installments beginning one month from the date the finance charge accrues, shall not exceed eight dollars (\$8) per one hundred dollars per annum.



Such finance charge shall be computed on the principal amount financed on the contract notwithstanding that the time balance is required to be paid in installments. The finance charge shall not accrue over a longer period than one which commences on the date of substantial completion of the contract and ends on the date when the final installment is payable. For a period less or greater than twelve months or for amounts less or greater than one hundred dollars (\$100), the amount of the maximum finance charge shall be increased or decreased proportionately. A fractional monthly period of fifteen days or more may be considered a full month. If the finance charge computed as above provided is less than twelve dollars (\$12), a minimum finance charge of twelve dollars (\$12) may be made.

(b) Subject to the limitations in subsection (c) of this section, when a contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular, unequal or larger installment or installments, or if the finance charge accrues from a date more than one month before the first installment is payable, the finance charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same yield as if the contract were payable in accordance with the standard payment terms stated in subsection (a) hereof.

(c) If the amount of any installment is two times or more the amount of any other installment except the down payment, the amount of the finance charge in respect to the portion of the principal amount financed included in such larger installment shall not exceed the equivalent of six per cent per annum simple interest for the period from the date on which finance charge begins to accrue to the due date of such larger installment and such portion of the finance charge shall be payable in substantially equal periodic installments throughout such period.

Section 302. Splitting or Dividing of Sales Transactions Prohibited.—No contractor shall induce or permit any buyer to split up or divide any sale transaction for the purpose of qualifying for any exclusion under subsection (10) of section 102 hereof.

Section 303. Prepayment.—(a) Notwithstanding the provisions of any home improvement installment contract to the contrary, any buyer may pay the contract in full at any time before maturity and in so paying shall receive a refund credit thereon. Except as provided in subsection (b) of this section, the amount of any such

refund credit shall represent at least as great a proportion of the finance charge, or if the contract has been extended, deferred or refinanced, of the additional charge therefor, as the sum of the periodical time balance scheduled by the contract to follow the installment date after the day of prepayment bears to the sum of all the periodical time balances under the schedule of installments in the contract or, if the contract has been extended, deferred or refinanced, as so extended, deferred or refinanced.

(b) If any part of the finance charge is computed on an installment as provided in subsection (c) of section 301 of this act, the amount of such refund credit applicable to that part of the finance charge shall represent at least as great a proportion of that part of the finance charge as the number of months to elapse after the month in which prepayment is made to the due date of that installment bears to the number of months from the date the finance charge accrues to the due date of that installment.

(c) Where the amount of the credit for anticipation of payment is less than one dollar (\$1), no refund need be made. Where the earned finance charge amounts to less than the minimum finance charge, there may be retained an amount equal to the minimum finance charge under section 301 hereof.

Section 304. Extension or Deferment.—The holder of a home improvement 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 thereunder. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to one per cent per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar (\$1) for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar (\$1). Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or de-

ferral, any insurance coverages provided for in the contract.

Section 305. Refinancing; Consolidation.—The holder of a home improvement installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule or schedules of installment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 303 if he had prepaid in full his obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. Such refinance charge shall not exceed the rate of finance charge provided under section 301 of this act. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided therein. The refinancing agreement shall set forth the amount of the unpaid time balance or balances 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 or balances and the new schedule or schedules of installment payments. A refinancing agreement between a financing agency and a buyer may consolidate the new unpaid time balances of two or more home improvement installment contracts by providing for a new schedule of consolidated installment payments, and may provide for the acceleration of the consolidated time balance upon a failure of the buyer to pay in full any consolidated installment payment. A contractor may not consolidate two or more home improvement installment contracts except to the extent provided in sections 306, 307 and 308 hereof.

Section 306. Add-On Sales.—A home improvement installment contract which otherwise conforms to the requirements of this act may contain the provision that the contractor may at his option add to such contract subsequent home improvement installment sales made by such contractor to the buyer, and that the total time balance of the goods and services covered by such con-

tract shall be increased by the principal amount financed under the subsequent sale or sales, and that all finance charges and installment payments may, at the contractor's option, be increased proportionately and that all terms and conditions of the contract shall apply equally to such sale or sales. In addition, such contract may provide for the payment by the buyer of the additional cost of premiums for continuing in force, until the due date of the final installment of the consolidated time balance, any insurance coverages provided for therein. The minimum finance charge as provided in section 301 may be used but once in any series of add-on home improvement installment sales.

Section 307. Finance Charge; Add-On Sales.—Subject to the provisions of section 301, the finance charge to be included in a consolidated time balance shall be determined by applying a finance charge at a rate not exceeding the maximum rate specified in that section to either:

(a) The total of the principal amount financed under the subsequent sale and the unpaid balance of any previous contract determined by deducting from the unpaid time balance thereof as of the date the finance charge is to accrue on the subsequent sale, any then unearned finance charge in an amount not less than the refund credit provided for in section 303 computed without the allowance of any minimum earned finance charge, for the period from the date the finance charge is to accrue on the subsequent sale to and including the date when the final installment of such consolidated time balance is payable; or

(b) The principal amount financed under the subsequent sale for the period from the date the finance charge is to accrue thereon to and including the date when the final installment of such consolidated time balance is payable and, if the due date of the final installment of such consolidated time balance is later than the due date of the final installment of any previous contract included in the consolidated time balance, on the unpaid time balance of such previous contract as of the date the finance charge is to accrue on the subsequent sale for the period from the date when the final installment on the previous contract would have been payable to the date when the final installment of such consolidated time balance is payable.

Section 308. Memorandum; Add-On Sales.—When a subsequent home improvement installment sale is made, the contractor shall deliver to the buyer, prior to the due date of the first installment, a memorandum which shall set forth the following:

(a) The name of the contractor, the place of business of the contractor, the name and address of the buyer, as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.

(b) The cash price of the goods and services which are the subject matter of the subsequent sale.

(c) The amount of the buyer's down payment, in respect of the subsequent sale, itemizing any allowance given by the contractor, the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(d) The unpaid cash balance which is the difference between item (b) and item (c).

(e) The premium paid for each type of insurance, if any, included in the subsequent sale for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer and a brief description of each type of coverage and the term thereof.

(f) The amount of official fees, if any, in respect of the subsequent sale.

(g) The principal amount financed in respect of the subsequent sale which is the sum of items (d), (e) and (f).

(h) The unpaid time balance of the prior contract or contracts.

(i) The amount of any refund credit in respect of the prior contract or contracts.

(j) Item (h) less item (i).

(k) The premiums paid for any additional insurance and the cost of official fees in respect of the prior contract or contracts, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.

(l) The total principal amount financed, which is the sum of items (g), (j) and (k).

(m) The amount of the finance charge expressed in dollars.

(n) The consolidated time balance, which is the sum of items (l) and (m), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(o) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in ten point bold type or type-written and underlined: This contract ("memoran-

dum'') is not payable in installments of equal amounts. Followed, if there be but one larger installment by: An installment of \$. . . . . will be due on . . . . . . . . . . , or if there be more than one larger installment, by: Larger installments will be due as follows: . . . . . (insert the amount or amounts of every larger installment and its due date).

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. The memorandum need not make any reference to items (e), (f) or (k) if a charge for the item is not included. The memorandum shall contain the statement that the contractor is adding the subsequent home improvement installment sale to the buyer's existing contract in accordance with the provisions thereof. Until the contractor delivers to the buyer the memorandum as provided in this section, the buyer shall be obligated to pay only the cash price of the subsequent home improvement installment sale.

ARTICLE IV.

MISCELLANEOUS.

Section 401. Notice of Assignment; Payments.—Unless the buyer has notice of the actual or intended assignment of a home improvement installment contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees.

Section 402. Statement of Account; Receipts.—At any time after its execution, but not later than one year after the last payment thereunder, the holder of a home improvement installment contract shall, upon written request of the buyer, give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply each statement to the buyer at a charge not exceeding one dollar (\$1) for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

Section 403. Payment in Full; Release of Liens.—After the payment of all sums for which the buyer is obligated under a home improvement installment contract and upon demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such one or more good and sufficient instruments

as may be necessary to acknowledge payment in full and to release all collateral.

Section 404. Buyer Rewards Prohibited.—(a) As part of or in connection with the inducement to enter any home improvement installment contract, no person shall promise or offer to pay, credit or allow to any buyer, any compensation or reward for the procurement of a home improvement installment contract with others.

(b) No person shall offer, deliver, pay, credit or allow to the buyer, any gift, bonus, award, merchandise, trading stamps, or cash loan as an inducement to enter into a home improvement installment contract.

(c) A contractor or financing agency may give tangible items to prospective buyers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a home improvement installment contract; provided no such item shall exceed a cost value of two dollars fifty cents (\$2.50), and no buyer or other person shall receive more than one such item in connection with any one sale.

Section 405. Violation of Agent Imputed to Principal.—Any violation of any of the provisions of this act upon the part of any director, manager, partner, officer, salesman, agent or employe of a contractor or financing agency shall be deemed a violation of such contractor or financing agency, unless it shall appear that the individuals engaged in the management of the contractor or financing agency had no knowledge of the wrongful conduct, or were unable to prevent the violation.

Section 406. Confession of Judgment; Execution.—A home improvement installment contract or a note given in connection therewith may contain a power of attorney to confess judgment which, for more abundant security, may be exercised by the holder before default; but any person who shall cause a writ of execution to be issued on such judgment before a default on such contract shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or suffer imprisonment not to exceed six months, or both.

Section 407. Prohibited Charges.—No person shall charge, collect or receive from any buyer, directly or indirectly, any further or other amount for costs, credit investigation charges, insurance premiums, examination, appraisal, service, brokerage, commission, interest, discount, expense, fee, fine, penalty or other thing of value in connection with a home improvement installment contract other than the charges authorized by this act. Any such unauthorized charge shall be unenforceable.

Any payment thereof shall be applied to the next maturing installment, or, if the contract has been fully paid, remitted to the buyer and the buyer shall be entitled to recover all such unauthorized charges.

Section 408. Cash Loans Prohibited.—No cash loan shall directly or indirectly be included in or combined or consolidated with any home improvement installment contract or with any extension, deferment, refinancing, add-on or consolidation agreement pertaining thereto.

Section 409. Buyers Waiver of Statutory Protection.—No act, agreement or statement of any buyer under a home improvement installment contract shall constitute a valid waiver of any provision of this act intended for the benefit or protection of the buyer.

Section 410. Application of Act to Existing Contracts.—The provisions of this act shall not apply to or affect the validity of any home improvement installment contract otherwise within the purview of this act, which is made prior to the effective date of the respective provisions of this act governing such contracts.

Section 411. Severability.—If any provision of this act or the application thereof to any person or circumstance is held unconstitutional, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

## ARTICLE V.

### PENALTIES AND REMEDIES.

Section 501. Penalties.—Any person who shall willfully violate any provision of this act, except section 406, or shall direct or consent to such violation, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) for the first offense; and for each subsequent offense a like fine or suffer imprisonment not to exceed one year, or both, in the discretion of the court. Violation of any order, decree or injunction issued pursuant to the provisions of this act shall institute prima facie proof of a violation of this section.

Section 502. Remedy by Injunction; Civil Penalty.—(a) The Attorney General or the district attorney of any county may bring an action in the name of the Commonwealth to restrain or prevent any violation of this act or any continuance of any such violation. Such action, in the case of the Attorney General, shall be brought in the Court of Common Pleas of Dauphin County, upon which jurisdiction thereof is hereby conferred, and, in the case of the district attorney, in the



county where the defendant resides, has his principal place of business, or where the act sought to be restrained has been, or is about to be, performed.

(b) Any person who violates any order or decree entered, or injunction issued, pursuant to subsection (a) hereof, shall be liable to forfeit and pay a civil penalty of not more than one thousand dollars (\$1,000), in the discretion of the court, to be recovered as judgments are now by law recovered. For the purpose of this section, the court of common pleas entering any order or decree, or issuing any injunction, under the provisions of this section may retain jurisdiction, and the cause may be continued.

(c) Any penalty directed to be paid under the provisions of this section shall be in addition to any penalty which may be imposed under the provisions of section 501 hereof.

ARTICLE VI.

REPEALER AND EFFECTIVE DATE.

Section 601. Repealer.—All acts or parts of acts which are inconsistent herewith are hereby repealed.

Section 602. Effective Date.—The provisions of this act shall become effective January 1, 1964.

APPROVED—The 14th day of August, A. D. 1963.

WILLIAM W. SCRANTON

No. 465

AN ACT

Amending the act of June 24, 1939 (P. L. 872), entitled "An act to consolidate, amend and revise the penal laws of the Commonwealth," making it illegal for minors to attempt to purchase, to purchase, consume, possess or transport alcohol, liquor or malt or brewed beverages, and providing penalties.

The Penal Code. The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Act of June 24, 1939, P. L. 872, amended by adding a new section 675.1.

Section 1. The act of June 24, 1939 (P. L. 872), known as "The Penal Code," is amended by adding, after section 675, a new section to read:

*Section 675.1. Prohibiting the Purchase, Consumption, Possession or Transportation of Intoxicating Liquors or Malt or Brewed Beverages by Minors.—(a) It shall be unlawful for a person less than twenty-one years of age to attempt to purchase, to purchase, consume,*