STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Swerbs Motors, Inc. dba
J.D. Byrider-Muskegon
License No. IS-0017557

Respondent.
_____/

Enforcement Case No. 13-11707

Issued and entered
this 8th day of November 2013
by Rhonda Fossitt
Senior Deputy Director

CONSENT ORDER

Based upon the Stipulation to Entry of Consent Order and the files and records of the Department of Insurance and Financial Services (DIFS) in this matter, the Senior Deputy Director finds and concludes that:

1. The Senior Deputy Director has jurisdiction and authority to adopt and issue this Consent Order in this proceeding pursuant to the Michigan Administrative Procedures Act of 1969 (APA), as amended, MCL 24.201 *et seq.*, and the Motor Vehicle Sales Finance Act (Act), 1950 PA 27, MCL 492.101 *et seq.*

2. All required notices have been issued in this case, and the notices and service thereof were appropriate and lawful in all respects.

3. Acceptance of the Stipulation to Entry of Consent Order is reasonable and in the public interest.

4. All applicable provisions of the APA have been met.

5. Respondent violated Section 3 of the Act, MCL 492.103, Section 13 of the Act, MCL 492.113, and Section 14 of the Act, MCL 492.114.

Now therefore, based upon the Stipulation to Entry of Consent Order and the facts surrounding this case, **IT IS ORDERED THAT**:

A. The Stipulation to Entry of Consent Order is incorporated herein and made a part of this Order.

B. Respondent shall comply with all agreed terms in the Stipulation to Entry of Consent Order.

C. Respondent shall not engage in any violations of law identified in paragraph 5 of this Order and the Stipulation to Entry of Consent Order and agrees to remove language from its contract that provides that any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the buyer fails to satisfy an obligation that is not a part of the installment sale contract.

D. The Senior Deputy Director retains jurisdiction over the matters contained herein and has the authority to issue such further order(s) as shall be deemed just, necessary, and appropriate in accordance with the Act. Failure to abide by the terms and provisions of the Stipulation to Entry of Order and this Order may result in the commencement of additional proceedings.

Rhonda Fossitt

Rhonda Fossitt
Senior Deputy Director

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STIPULATION TO ENTRY OF CONSENT ORDER

Swerbs Motors, Inc. dba J.D. Byrider-Muskegon (Respondent) and the Department of Insurance and Financial Services (DIFS) stipulate to the following:

1. On or about June 18, 2013, DIFS served Respondent with a Notice of Opportunity to Show Compliance (NOSC) alleging that Respondent violated provisions of the Motor Vehicle Sales Finance Act (Act), 1950 PA 27, MCL 492.101 *et seq.*

2. The NOSC contained allegations that Respondent violated Section 3 of the Act, MCL 492.103, Section 13 of the Act, MCL 492.113, and Section 14 of the Act, MCL 492.114, and set forth the applicable laws and penalties which could be taken against Respondent.

3. Respondent exercised its right to an opportunity to show compliance pursuant to the Michigan Administrative Procedures Act (APA), MCL 24.201 *et seq.*

4. DIFS and Respondent have conferred for purposes of resolving this matter and have agreed to resolve this matter pursuant to the terms set forth below.

5. Respondent is currently licensed with DIFS as an installment seller pursuant to the Act.

6. Based upon the allegations set forth in the NOSC and communications with the Respondent, DIFS established the following:

    a. Respondent engaged in the business of an installment seller of motor vehicles prior to obtaining a license in violation of Section 3 of the Act, MCL 492.103.

    b. Respondent's installment sale contracts contained language that permitted the holder to accelerate the contract if it deems itself insecure because of the buyer's default on obligations outside of the installment sale contract, in violation of Section 14 of the Act, MCL 492.114.

c. Section 22a of the Act, MCL 492.122a, provides that a licensee's compliance with Regulation Z of the Truth in Lending Act, 12 CFR § 226.18 (Reg Z) is compliance with Section 13 of the Act, MCL 492.113. Respondent understated the finance charge when it failed to amortize the amount financed in accordance with the contracts in violation of Reg Z, 12 CFR § 226.18, and MCL 492.113. The foregoing also resulted in the inaccurate disclosure of the payment schedule and total sales price in violation of Reg Z, 12 CFR § 226.18, and MCL 492.113.

7. Respondent agrees that it will pay to the state of Michigan, through DIFS, a market conduct fee in the amount of $5,000.

8. Respondent agrees to cease and desist from violating MCL 492.103, MCL 492.113 and MCL 492.114. Respondent further agrees to remove language from its contract that provides that any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the buyer fails to satisfy an obligation that is not a part of the installment sale contract.

9. Both parties have complied with the procedural requirements of the APA and the Act.

10. Respondent understands and agrees that this Stipulation to Entry of Consent Order will be presented to the Senior Deputy Director for approval.

11. The Senior Deputy Director may, in his sole discretion, decide to accept or reject the Stipulation to Entry of Consent Order. If the Senior Deputy Director accepts the Stipulation to Entry of Consent Order, Respondent waives the right to a hearing in this matter and consents to the entry of the Consent Order. If the Senior Deputy Director does not accept the Stipulation to Entry of Consent Order, Respondent waives any objection to the Senior Deputy Director holding a formal administrative hearing and making his decision after such hearing. Respondent consents to the entry of the attached Consent Order.

12. Respondent has had an opportunity to review the Stipulation to Entry of Consent Order and the proposed Consent Order and have the same reviewed by legal counsel.

SWERBS MOTORS, INC. DBA
J.D. BYRIDER-MUSKEGON

By: Roger A. Swerbs II
Its: President

10-31-13
Dated

The Department of Insurance and Financial Services Staff approve this Consent Order and Stipulation and recommend that the Senior Deputy Director accept it.

DEPARTMENT OF INSURANCE
AND FINANCIAL SERVICES

By: Marlon F. Roberts (P68523)
Staff Attorney

10-31-13
Dated