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**HOUSE BILL 426**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Debbie A. Rodella**

**AN ACT**

**RELATING TO AUTOMOBILES; CHANGING PROVISIONS OF THE MOTOR  
VEHICLE SALES FINANCE ACT TO COMPLY WITH FEDERAL REQUIREMENTS  
REGARDING DISCLOSURE OF NEGATIVE EQUITY.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 58-19-1 NMSA 1978 (being Laws 1959,  
Chapter 204, Section 1) is amended to read:**

**"58-19-1. SHORT TITLE. -- [~~This act~~] Chapter 58, Article  
19 NMSA 1978 may be cited as the "Motor Vehicle Sales Finance  
Act". "**

**Section 2. Section 58-19-2 NMSA 1978 (being Laws 1959,  
Chapter 204, Section 2, as amended) is amended to read:**

**"58-19-2. DEFINITIONS. -- As used in the Motor Vehicle  
Sales Finance Act:**

**A. "motor vehicles" means automobiles,**

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1 recreational vehicles, recreational travel trailers, trailers,  
2 motorcycles, trucks, semi-trailers, truck tractors and buses  
3 designed and used primarily to transport persons or property  
4 on a public highway, farm machinery and all vehicles new or  
5 used, with any power other than muscular power except boat  
6 trailers, aircraft or any vehicle [~~which~~] that runs only on  
7 rails or tracks, but does not include any motor vehicle having  
8 a gross vehicle weight of ten thousand pounds or more  
9 purchased primarily for business or commercial purposes;

10 B. "retail buyer" or "buyer" means a person who  
11 buys a motor vehicle primarily for personal, family or  
12 household purposes from a retail seller and who executes a  
13 retail installment contract in connection therewith;

14 C. "retail seller" or "seller" means a person who  
15 sells a motor vehicle to a retail buyer or subject to a retail  
16 installment contract;

17 D. "holder" of a retail installment contract means  
18 the retail seller of the motor vehicle under or subject to the  
19 contract or, if the contract is purchased by a sales finance  
20 company or other assignee, the sales finance company or other  
21 assignee;

22 E. "retail installment transaction" means any  
23 transaction evidenced by a retail installment contract entered  
24 into between a retail buyer and a retail seller wherein the  
25 retail buyer buys a motor vehicle from the retail seller at a

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1 time price payable in one or more deferred installments. The  
2 cash sale price of the motor vehicle, the amount included for  
3 insurance and other benefits if a separate charge is made  
4 therefor, official fees and the finance charge together  
5 constitute the time price;

6 F. "retail installment contract" or "contract" means  
7 an agreement, entered into in this state or made subject to  
8 the laws of this state, pursuant to which the title to or a  
9 lien upon the motor vehicle [~~which~~] that is the subject matter  
10 of a retail installment transaction is retained or taken by a  
11 retail seller from a retail buyer as security for the buyer's  
12 obligation. The term includes a chattel mortgage, a  
13 conditional sales contract and a contract for the bailment or  
14 leasing of a motor vehicle by which the bailee or lessee  
15 contracts to pay as compensation for its use a sum  
16 substantially equivalent to or in excess of its value and by  
17 which it is agreed that the bailee or lessee is bound to  
18 become or has the option of becoming the owner of the motor  
19 vehicle upon full compliance with the provisions of the  
20 contract;

21 G. "cash sale price" means the price stated in a  
22 retail installment contract for which the seller would have  
23 sold to the buyer, and the buyer would have bought from the  
24 seller, the motor vehicle [~~which~~] that is the subject matter  
25 of the retail installment contract, if the sale had been a

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1 sale for cash instead of a retail installment transaction.  
2 Cash sale price may include any taxes, registration fee,  
3 certificate of title fee, license and other fees and charges  
4 for accessories and their installation and for delivery,  
5 servicing, repairing or improving the motor vehicle;

6 H. "official fees" means the fee prescribed by law  
7 for filing, recording or otherwise perfecting and releasing or  
8 satisfying a retained title or a lien created by a retail  
9 installment contract;

10 I. "finance charge" means the amount agreed upon  
11 between the buyer and the seller [~~as limited in the Motor~~  
12 ~~Vehicle Sales Finance Act~~] to be added to the aggregate of the  
13 cash sale price, the amount, if any, included for insurance  
14 and other benefits and official fees, in determining the time  
15 price;

16 J. "person" means an individual, partnership,  
17 corporation, association and any other group however  
18 organized;

19 K. "sales finance company" means a person engaged in  
20 whole or in part in the business of purchasing retail  
21 installment contracts from one or more retail sellers. The  
22 term includes but is not limited to a bank, trust company,  
23 private banker, small loan licensee, industrial bank or  
24 investment company, if so engaged; the term also includes a  
25 retail seller engaged in whole or in part in the business of

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1 creating and holding retail installment contracts [~~which~~] that  
2 exceed a total aggregate outstanding indebtedness of one  
3 hundred thousand dollars (\$100,000);

4 L. "director" means the director of the financial  
5 institutions division of the regulation and licensing  
6 department; and

7 M. "year" means a period of three hundred sixty-five  
8 days; "month" means one-twelfth of a year; and "day" means one  
9 three-hundred-sixty-fifth of a year. "

10 Section 3. Section 58-19-7 NMSA 1978 (being Laws 1959,  
11 Chapter 204, Section 7, as amended) is amended to read:

12 "58-19-7. RETAIL INSTALLMENT CONTRACTS--REQUIREMENTS--  
13 PROHIBITIONS.--

14 A.

15 (1) A retail installment contract shall be in  
16 writing and shall be signed by both the buyer and the seller;  
17 it shall be completed as to all essential provisions prior to  
18 its signing by the buyer.

19 (2) The printed portion of the contract, other  
20 than instructions for completion, shall be in at least eight  
21 point type. The contract shall contain in a size equal to at  
22 least ten point bold type the following notice: "Notice to  
23 the Buyer: 1. Do not sign this contract before you read it  
24 or if it contains any blank spaces. 2. You are entitled to an  
25 exact copy of the contract you sign. "

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1                   (3) The seller shall deliver to the buyer or  
2 mail to him at his address shown on the contract a copy of the  
3 contract signed by the seller. Until the seller does so, a  
4 buyer who has not received delivery of the motor vehicle shall  
5 have the right to rescind his agreement and to receive a  
6 refund of all payments made and return of all goods traded in  
7 to the seller on account of or in contemplation of the  
8 contract; if such goods cannot be returned, the value thereof  
9 shall be paid by the seller. Any acknowledgment by the buyer  
10 or delivery of a copy of the contract shall be in a size equal  
11 to at least ten point bold type and, if contained in the  
12 contract, shall appear directly above the buyer's signature.

13                   (4) Any such agreement shall contain  
14 immediately before the buyer's signature substantially the  
15 following notice printed or typed in a size equal to at least  
16 twelve point bold type as follows: "

17                                   "NOTICE TO BUYER

18                   **LIABILITY INSURANCE FOR BODILY INJURY CAUSED TO YOURSELF OR TO**  
19                   **OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED**  
20                   **WITH THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE**  
21                   **COVERAGE, YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF**  
22                   **YOUR CHOICE. "**

23                   B. The contract shall contain the following items:

24                               (1) the names of the seller and the buyer, the  
25 place of business of the seller, the residence or place of

1 business of the buyer as specified by the buyer and a  
2 description of the motor vehicle, including its make, year  
3 model, model and identification numbers or marks;

4 (2) the cash sale price of the motor vehicle;

5 (3) the amount of the buyer's down payment and  
6 whether made in money or goods;

7 (4) the difference between items (2) and (3);

8 (5) the amount, if any, included for insurance  
9 and other benefits, specifying the types of coverage and  
10 benefits, and if it is the case, including as a benefit  
11 amounts paid or to be paid by the seller pursuant to agreement  
12 with the buyer to discharge a security interest, lien or lease  
13 interest on property traded in;

14 (6) the amount of official fees;

15 (7) the principal balance, which is the sum of  
16 items (4), (5) and (6);

17 (8) the amount of the finance charge; and

18 (9) the time balance, which is the sum of items  
19 (7) and (8), payable in installments by the buyer to the  
20 seller, the number of installments, the amount of each  
21 installment and the due date or term thereof.

22 The above items need not be stated in the sequence or  
23 order set forth, and additional items may be included to  
24 explain the calculations involved in determining the stated  
25 time balance to be paid by the buyer.

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1           C. The amount, if any, included for insurance, which  
2 may be purchased by the holder of the retail installment  
3 contract, shall not exceed the applicable premiums chargeable  
4 in accordance with the rates filed with the [~~department of~~  
5 insurance division of the [~~state corporation~~] public  
6 regulation commission. If dual interest insurance on the  
7 motor vehicle is purchased by the holder, it shall, within  
8 thirty days after execution of the retail installment  
9 contract, send or cause to be sent to the buyer a policy or  
10 policies or certificate of insurance written by an insurance  
11 company authorized to do business in this state, clearly  
12 setting forth the amount of the premium, the kind or kinds of  
13 insurance, the coverages and all the terms, exceptions,  
14 limitations, restrictions and conditions of the contract or  
15 contracts of insurance. The buyer shall have the privilege of  
16 purchasing such insurance from an agent or broker of his own  
17 selection and of selecting an insurance company acceptable to  
18 the holder, and in such case, the inclusion of the insurance  
19 premium in the retail installment contract shall be optional  
20 with the seller.

21           D. If any insurance is canceled or the premium  
22 adjusted, any refund of the insurance premium received by the  
23 holder shall be credited to the final maturing installments of  
24 the contract except to the extent applied toward payment for  
25 similar insurance protecting the interests of the buyer and



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1 the holder or either of them.

2 E. The holder may, if the contract or refinancing  
3 agreement so provides, collect a delinquency and collection  
4 charge on each installment in default for a period not less  
5 than ten days, in an amount not in excess of five percent of  
6 each installment or fifteen dollars (\$15.00), whichever is  
7 less. In addition to such delinquency and collection charge,  
8 the contract may provide for the payment of ~~[attorney's]~~  
9 attorney fees not exceeding fifteen percent of the amount due  
10 and payable under such contract, where such contract is  
11 referred for collection to any attorney not a salaried  
12 employee of the holder of the contract, plus the court costs.

13 F. A buyer may transfer his equity in the motor  
14 vehicle at any time to another person upon agreement by the  
15 holder, but in such event the holder of the contract shall be  
16 entitled to a transfer of equity fee, which shall not exceed  
17 twenty-five dollars (\$25.00).

18 G. No retail installment contract shall be signed by  
19 any party thereto when it contains blank spaces to be filled  
20 in after execution ~~[thereby]~~, except that if delivery of the  
21 motor vehicle is not made at the time of the execution of the  
22 contract, the identifying numbers or marks of the motor  
23 vehicle or similar information and the due date of the first  
24 installment may be inserted in the contract after its  
25 execution. The buyer's written acknowledgement, conforming to

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1 the requirements of Paragraph (3) of Subsection A of this  
2 section, of delivery of a copy of a contract shall be  
3 conclusive proof of such delivery, that the contract when  
4 signed did not contain any blank spaces except as herein  
5 provided and of compliance with this section in any action or  
6 proceeding by or against the holder of the contract.

7 H. Upon written request from the buyer, the holder  
8 of a retail installment contract shall give or forward to the  
9 buyer a written statement of the dates and amounts of payments  
10 made and the total amount unpaid under such contract. A buyer  
11 shall be given a written receipt for any payment when made in  
12 cash.

13 I. No provision in a retail installment contract  
14 relieving the seller from liability under any legal remedies,  
15 which the buyer may have against the seller under the  
16 contract, or any separate instrument of similar import  
17 executed in connection therewith, shall be enforceable.

18 J. In the event that the seller or the holder of the  
19 retail installment contract repossesses a motor vehicle, the  
20 buyer shall be responsible and liable for any deficiency in  
21 accordance with Section 55-9-504 NMSA 1978. "