

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

B. "retail buyer" or "buyer" means a person who

buys a motor vehicle primarily for personal, family or household purposes from a retail seller and who executes a retail installment contract in connection therewith;

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

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

E. "retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, official fees and the finance charge together constitute the time price;

F. "retail installment contract" or "contract" means an agreement, entered into in this state or made subject to the laws of this state, pursuant to which the title to or a lien upon the motor vehicle that is the subject matter of a retail installment transaction is retained or

taken by a retail seller from a retail buyer as security for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become or has the option of becoming the owner of the motor vehicle upon full compliance with the provisions of the contract;

G. "cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle that is the subject matter of the retail installment contract, if the sale had been a sale for cash instead of a retail installment transaction. Cash sale price may include any taxes, registration fee, certificate of title fee, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle;

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

I. "finance charge" means the amount agreed upon

between the buyer and the seller to be added to the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees, in determining the time price;

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

K. "sales finance company" means a person engaged in whole or in part in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, small loan licensee, industrial bank or investment company, if so engaged; the term also includes a retail seller engaged in whole or in part in the business of creating and holding retail installment contracts that exceed a total aggregate outstanding indebtedness of one hundred thousand dollars (\$100,000);

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

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

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

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

A.

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

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

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

the contract, shall appear directly above the buyer's signature.

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

"NOTICE TO BUYER

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

B. The contract shall contain the following items:

(1) the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle, including its make, year model, model and identification numbers or marks;

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

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

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

(5) the amount, if any, included for insurance and other benefits, specifying the types of coverage and benefits, and if it is the case, including as a benefit

amounts paid or to be paid by the seller pursuant to agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;

(6) the amount of official fees;

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

(8) the amount of the finance charge; and

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

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

C. The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance division of the public regulation commission. If dual interest insurance on the motor vehicle is purchased by the holder, it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance written by an insurance company authorized to do business in

this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, and in such case, the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

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

E. The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than ten days, in an amount not in excess of five percent of each installment or fifteen dollars (\$15.00), whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of attorney fees not exceeding fifteen percent of the amount due and payable under such contract, where such contract is referred for collection to any attorney not a salaried employee of the holder of the

contract, plus the court costs.

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

G. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after execution, except that if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgement, conforming to the requirements of Paragraph (3) of Subsection A of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as herein provided and of compliance with this section in any action or proceeding by or against the holder of the contract.

H. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments made and the total amount unpaid under such contract. A buyer shall be given a written receipt for any

