

**THE PROPOSED PENNSYLVANIA
CONSUMER CREDIT CODE:
THE MOTOR VEHICLE SALES FINANCE ACT**

**REPORT OF THE ADVISORY COMMITTEE ON THE
CONSUMER CREDIT CODE**

NOVEMBER 2006

The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations or conclusions contained in this report.

Joint State Government Commission
Room 108 Finance Building
Harrisburg, PA 17120-0018

Telephone 717-787-4397
Fax 717-787-7020

E-mail: jntst02@legis.state.pa.us
Website: <http://jsg.legis.state.pa.us>

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GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
JOINT STATE GOVERNMENT COMMISSION
ROOM 108 - FINANCE BUILDING
HARRISBURG 17120
717-787-4397
FAX 717-787-7020

November 2006

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Advisory Committee on the Consumer Credit Code. This report contains legislation, in addition to official comments, that codifies the Motor Vehicle Sales Finance Act within proposed Part IV (Consumer Credit) of Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes. The recommendations contained in this report represent the consensus of the Advisory Committee gained after extensive analysis and deliberation.

On behalf of the General Assembly, I thank the members of the Advisory Committee for contributing their valuable time and expertise in the considerable effort to modernize, improve and develop consumer credit law in Pennsylvania. I commend the Advisory Committee for its commitment to codify the Motor Vehicle Sales Finance Act and assist in the legislative process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger A. Madigan".

Roger A. Madigan
Chair

TASK FORCE ON THE CONSUMER CREDIT CODE

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Joan P. Feldman, Esquire

Mary T. Gaiski

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Robert A. Mills, Esquire

Professor Juliet M. Moringiello, Esquire

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Peter J. Shovlin, Jr.

Dallas L. Smith

Philip L. Zulli, Esquire

William Zysk

Alternates

Michael P. Bradley

Art Dinger

Carter D. Frantz, Esquire
(Department of Banking)

Joseph K. Goldberg, Esquire

David S. Rzepecki, Esquire

Paul H. Wentzel, Jr.
(Department of Banking)

Consultants

Anita Brown

Robert D. Carter

F. Deborah Cooper

Patricia Hasson

Robert J. Irvin

Former Members

A. William Schenck, III
(Former Secretary of Banking)

Dean E. Sheaffer

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INTRODUCTION

The act of December 9, 2002 (P.L.1446, No.186) amended the act of July 28, 1947 (P.L.1110, No. 476), known as the Motor Vehicle Sales Finance Act (MVSFA). Section 20 of the legislation provided the following:

Because many of the circumstances and events that led to the initial adoption of the act in 1947 have substantially changed due to substantial improvements in business practices and expanded Federal regulations, a study of proposals to update and modernize the act shall be conducted by the Joint State Government Commission and the recommendations of the commission reported to the General Assembly. In addition to changes to the act, the commission shall also consider the advisability of merging the provisions of the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act [GSISA], and other consumer finance legislation into a consolidated Consumer Credit Code which avoids duplication of Federal law and regulations and promotes uniformity of law among the states.

Section 20 further provided for the creation of an eight-member legislative task force consisting of four members of the Senate and four members of the House. In order to assist the Task Force, the Joint State Government Commission was empowered to appoint an advisory committee, which was to include a representative of the Department of Banking, the Consumer Protection Division of the Office of Attorney General, the Pennsylvania Automotive Association, the Pennsylvania Retailers' Association and the Pennsylvania Bankers Association, along with other individuals having knowledge and expertise regarding motor vehicle sales finance, installment sales and consumer protection laws and regulations.

Representative Chris Ross was named Chair of the Task Force. On May 10, 2004, the Task Force held its organizational meeting.

Subsequently, an advisory committee was organized, consisting of the Secretary of Banking, the Agent Supervisor of the Consumer Protection Division of the Office of Attorney General, attorneys, a law professor and representatives of financial institutions, business interests and consumer interests. On September 14, 2004, the Advisory Committee held its organizational meeting, and Representative Chris Ross agreed to assume the chairmanship of the Advisory Committee as well. For organizational purposes, the Advisory Committee formed three subcommittees to facilitate the review of consumer finance legislation and discuss the creation of a consolidated Consumer Credit Code in Pennsylvania.

The GSISA Subcommittee was specifically charged with reviewing the 1966 Act as amended and making legislative recommendations. Several consultants were invited to participate in the review process to facilitate discussions regarding installments sales for goods and services. From March to September 2005, the subcommittee met a total of five times.

The Subcommittee on Federal Law and New Financial Transactions (FLNFT) was specifically charged with reviewing the impact of Federal law on consumer finance legislation and determining the extent to which legislation should be proposed for unregulated financial transactions in Pennsylvania. The subcommittee also discussed whether any existing unconsolidated statutes could be brought into consolidated form within the Pennsylvania statutes. In addition, the subcommittee began a review of the Uniform Debt Management Services Act, drafted by the National Conference of Commissioners on Uniform State Laws, for inclusion in a proposed Consumer Credit Code. Several consultants representing credit counseling service providers were invited to participate in the review process to facilitate discussions regarding standard business practices and accreditation. From March 2005 to May 2006, the subcommittee met a total of eight times.

The MVSFA Subcommittee was specifically charged with reviewing the 1947 Act as amended¹ and making legislative recommendations. The members of the MVSFA Subcommittee represented the interests of the Department of Banking, the Consumer Protection Division of the Office of Attorney General, automobile dealers, and sellers of manufactured housing and recreational vehicles. From March 2005 to January 2006, the subcommittee met a total of nine times.

The Advisory Committee met in February, March, May and September 2006 to discuss the progress of the subcommittees and review the drafts of the proposed legislation. The Advisory Committee also reviewed comments from outside advocacy groups whose interests are affected by the work product of the Advisory Committee.

As a result of the Advisory Committee discussions, consensus was reached on the proposed framework of a consolidated Consumer Credit Code (12 Pa.C.S.),² which will contain, along with other statutory provisions, general provisions (Chapter 41) and a modernized, updated Motor Vehicle Sales Finance Act (Chapter 42).³ The Advisory Committee also made several other proposed recommendations regarding the issues of temporary insurance, the titling of repossessed motor vehicles and manufactured homes, and the timely release of titles.⁴

¹ See the Appendix for the act of July 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

² Title 12 (Commerce and Trade), Part IV (Consumer Credit) of the Pennsylvania Consolidated Statutes.

³ A modernized, updated Goods and Services Installment Sales Act will become Chapter 43.

⁴ See the section in this report titled "Other Proposed Recommendations."

Although consensus was reached on the proposed legislation as a whole, several members of the Advisory Committee expressed strong opposition to the provisions regarding mark-ups, as set forth in § 10(A)(14) of the MVSFA.⁵ Throughout the discussions of the MVSFA Subcommittee and the Advisory Committee, no other issue was more contentious and presented more challenges regarding the proposed statutory language. Four alternatives were debated.

The first alternative involved the elimination of a provision comparable to § 10(A)(14) of the MVSFA and the addition of the following explanatory comment:

This chapter does not contain § 10(A)(14) of the MVSFA, in light of the case of *Homziak v. General Electric Capital Warranty Corp.*, et al., 839 A.2d 1076 (Pa. Super. 2003), *appeal denied*, 860 A.2d 490 (Pa. 2004). The court in *Homziak* held that the Motor Vehicle Sales Finance Act does not prohibit the sale of extended service contracts at greater than dealer cost or the inclusion of such contracts as part of the cash value of the motor vehicle, if the corresponding charge is disclosed and voluntarily incurred by the buyer in the installment sale contract.

Four members of the MVSFA Subcommittee vigorously supported this approach throughout the subcommittee and advisory committee process: Peter K. Bauer of the Pennsylvania Automotive Association, Mary T. Gaiski of the Pennsylvania Manufactured Housing Association, Rebecca A. Lenington of the Pennsylvania Recreation Vehicle and Camping Association and Philip L. Zulli of the Pennsylvania Independent Auto Dealers' Association.

Mr. Zulli stated that inclusion of a provision comparable to § 10(A)(14) of the MVSFA would represent an unfounded departure from the principles of a market economy. He further remarked during the subcommittee and advisory committee process that a statutory provision restricting mark-ups is inconsistent with the system of free enterprise, as automobile dealers are not monopolies, there is no state of emergency necessitating the restriction, and no other merchants have such controls placed on their service contracts in Pennsylvania. Consequently, he questioned the legitimacy of a statutory provision regulating the amount of profit that automobile dealers may earn.

⁵ Section 10(A)(14) of the MVSFA, as amended by the act of December 9, 2002 (P.L.1446, No.186), provides that the Department of Banking may revoke or suspend a license if it find that the licensee "has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act, including making excessive mark-ups to charges" for items described in or in violation of specified statutory provisions. In addition, § 10(A)(14) of the MVSFA provides the following:

The department shall adopt a statement of policy that contains guidelines determining mark-ups that the department finds, after reasonably considering relevant market data, not to be excessive and shall update and revise the statement of policy to reflect changing business conditions. Mark-ups consistent with the guidelines shall not be deemed excessive. Mark-ups in excess of the guidelines and, until such time as the department adopts its guidelines, mark-ups for service contracts, warranties, debt cancellation agreements and debt suspension agreements in excess of 100% of the cost to the dealer shall be deemed excessive.

The second alternative involved a proposed provision specifying that the Department of Banking may investigate a complaint by a buyer regarding an alleged unconscionable or excessive mark-up of a service contract, warranty, debt cancellation agreement or debt suspension agreement and, if appropriate as determined by the department, reduce the amount of the mark-up. This proposal, as discussed, would recognize that statutory price restrictions are unnecessary in light of the *Homziak* decision, while still providing the department with a mechanism to address consumer pricing complaints. Therefore, this proposal would remove the bright-line limitation on mark-ups and provide for a case-by-case review of alleged abusive mark-ups upon complaint to the department.

The third alternative involved a proposed provision specifying that the Department of Banking require an installment seller to refund to a buyer the amount that the seller collected from the buyer that exceeded the permitted mark-up. A mark-up for a service contract, warranty, debt cancellation agreement and debt suspension agreement in excess of 100% of the cost to the dealer would be deemed excessive. Although this provision is based on § 10(A)(14) of the MVSFA, the references to the department adopting guidelines would be eliminated so that all mark-ups of the enumerated items would be capped at 100%.

The fourth alternative involved the retention of the language contained in § 10(A)(14) of the MVSFA.

During the subcommittee and advisory committee process, the principal arguments that were raised in favor of retaining the 100% mark-up language of § 10(A)(14) of the MVSFA concerned the continuing need to protect consumers and the need to maintain a “bright-line test” for enforcement purposes. Additionally, it was noted that consideration of a major policy change is best achieved through the formal review of legislation during the legislative process, at which time those who vigorously supported the removal of the 100% benchmark, for example, may seek an appropriate amendment to the legislation.

Because of these concerns and the divergent opinions regarding mark-ups, it was agreed that Chapter 42 should not change the law as set forth in the MVSFA. Accordingly, §§ 4203(a)(7) and 4210 of Chapter 42 reflect this position, retaining the 100% benchmark and preserving the mandate to the Department of Banking to maintain an ongoing review of these charges.

The Advisory Committee also discussed whether Pennsylvania should statutorily prohibit or regulate conditional sales agreements (sometimes referred to as “spot deliveries” or “yo-yo sales”). It ultimately decided that the courts and the Office of Attorney General is better equipped to address the practice on a case-by-case basis. If a problem arises regarding a conditional sales agreement, a buyer has several legal remedies, including dealer licensing oversight and possible recourse under the Unfair Trade Practices and Consumer Protection Law, the Truth in Lending Act, the Equal Credit Opportunity Act and PennDOT regulations.

On November 21, 2006, the Task Force met and authorized both the publication of a report, which contains the recommendations of the Advisory Committee relating to proposed 12 Pa.C.S. Chapters 41 and 42, and the introduction of the legislation contained in the report.

This report contains the proposed legislation, notes and official comments. The notes follow the sections and provide the basis for the statutory provisions or explain the differences between the statutory provisions and the MVSEFA. The comments also follow the sections and explain as necessary the statutory provisions. The official comments may be used in determining the intent of the General Assembly.⁶ This report also provides a summary of the recommendations, a detailed table of contents for the proposed legislation, transitional language and source tables.

Inclusion of any recommendation in this report does not necessarily reflect the endorsement of the Task Force. In addition, while this report represents the consensus of the Advisory Committee, it does not necessarily reflect unanimity among the members on each individual recommendation.

⁶ 1 Pa.C.S. § 1939.

SUMMARY OF RECOMMENDATIONS

The proposed legislation in this report creates a statutory framework for the Consumer Credit Code (12 Pa.C.S. Part IV), within which are general provisions (Chapter 41) and an updated, modernized and consolidated Motor Vehicle Sales Finance Act (Chapter 42). Proposed 12 Pa.C.S. Chapter 42 simplifies and reorganizes the statutory language regarding motor vehicle sales finance, making it more consistent with industry practice and clarifying terminology and procedures. The legislation also repeals the act of July 28, 1947 (P.L.1110, No.476), as amended by the act of December 9, 2002 (P.L.1446, No.186), known as the Motor Vehicle Sales Finance Act (MVSFA).

Chapter 42 differs from the MVSFA in several aspects. Unlike the MVSFA, § 4202 defines the terms “recreational vehicle,” “service contract,” “unpaid purchase price balance” and “warranty.” Chapter 42 does not define or reference “mobile homes”; instead, it replaces the term with “manufactured home,” consistent with the terminology used in the manufactured housing industry. The definition of “motor vehicle” in Chapter 42 explicitly includes a manufactured home and a recreational vehicle. The official comment to § 4202 clarifies that for the purpose of calculating interest rates, the definition of “finance charge” under § 4202 applies; however, the definition of “finance charge” under Regulation Z of the Federal Truth in Lending Act is to be used with respect to disclosure requirements under Chapter 42. Chapter 42 also replaces the term “default charge” with “late charge” throughout the statute.

In terms of charges regarding motor vehicle sales finance, Chapter 42 takes a slightly different approach from the MVSFA. First, references to estimated insurance charges under § 14(B)(4) of the MVSFA are not incorporated into § 4222. Second, Chapter 42 does not contain the minimum finance charges referenced in §§ 19(E) and 20(B) of the MVSFA. Third, although § 4245(b)(1) codifies part of § 21 of the MVSFA, several changes were made for clarification purposes. *See* the Note following § 4245.

Other principal differences between the MVSFA and proposed 12 Pa.C.S. Chapter 42 specifically include the following:

- (1) The gross vehicular weight under the definition of “heavy commercial motor vehicle” is changed from 15,000 to 13,000, to make it consistent with the Federal Motor Carrier Safety regulations. (§ 4202)
- (2) The Department of Banking must provide a copy of the provisions of Chapter 42 to each licensee in conjunction with the license application process, with such information to be made available to the licensee’s employees and to buyers of motor vehicles. (§ 4207)

- (3) Specific venue provisions are included in the statutory framework. (§ 4208)
- (4) An initial license application must contain the physical street address of the place of business, and a post office box address is no longer adequate. (§ 4212(b)(2))
- (5) The amount of the bond for a sales finance company is increased from \$5,000 to \$10,000. (§ 4213(c)(1))
- (6) A licensee desiring to change its business address must retain a copy of the license certificate for display during the period that it is awaiting an amended license certificate, thereby codifying a standard industry practice. (§ 4215(c)(1)(iii))
- (7) A license renewal application must contain an update of specific required information. (§ 4216(3))
- (8) In determining whether to issue or renew a license, the Department of Banking may not consider whether the applicant's spouse has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of specified offenses. (§ 4217(b)(2) and (3))
- (9) In determining whether to issue or renew a license, the Department of Banking may not consider whether a specified person has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of specified offenses, if the plea or conviction occurred more than ten years before the filing of the application. (§ 4217(b)(2) and (3))
- (10) The \$0.50 charge for a duplicate copy of the installment sale contract or an additional statement of account is replaced by "a reasonable fee not to exceed the cost of production." (§§ 4221(b)(3) and 4230(b)(2))
- (11) An installment sale contract must contain a statement that a buyer may have additional rights under the Unfair Trade Practices and Consumer Protection Law. (§ 4222(9))
- (12) An installment sale contract may contain an acceleration clause that authorizes the seller or holder to declare the entire balance due and payable if the buyer files for bankruptcy, defaults in the payment of a cross-collateralized obligation or had provided intentionally fraudulent and misleading information on a credit application. (§ 4228(2)(v) through (vii))
- (13) After a buyer pays the total amount owing under an installment sale contract, a holder must indicate on the specified instruments that the buyer's obligation has been paid in full and must, upon request, return such instruments to the buyer. (§ 4232(a)(1) and (2))

- (14) “On-the-spot” delivery of the certificate of title is not required; however, delivery must occur within ten days of the date of tender of payment in full of the buyer’s obligation under the installment sale contract. (§ 4232(b))
- (15) An installment seller of a manufactured home may charge appraisal fees, brokerage fees and commissions, if they represent actual charges and are properly disclosed to the buyer. (§ 4233(c))
- (16) A buyer’s waiver of the provisions of Chapter 42, including any purported waiver effected by a contractual choice of the law of another jurisdiction contained in an installment sale contract, is deemed contrary to public policy and is void and unenforceable. (§ 4234(b))
- (17) Only the costs of necessary repairs disclosed at the time of the installment sale may be included in the contract; necessary repairs arising after the execution of the contract may not be added to the original contract. (§ 4242(f)(2))
- (18) An installment seller may compute an authorized finance charge by any method, if the charge does not exceed the specified applicable maximum percentage. (§ 4243(b)(1))
- (19) A refinance charge for a manufactured home is determined by regulation of the Federal Housing Administration, pursuant to the National Housing Act. (§ 4244(b)(3))
- (20) If a refinance charge for a motor vehicle is insured or guaranteed in whole or in part by the Veterans’ Administration or another department or agency of the United States Government, the laws or regulations that govern the Federal department or agency regarding the maximum refinance charge and rate of interest for the refinancing will govern. (§ 4244(b)(4))
- (21) The secured transactions provisions of the Uniform Commercial Code generally limit the provisions under Chapter 42 regarding the repossession of a motor vehicle in a transaction involving a commercial purpose. (§ 4251(c))
- (22) A notice of repossession must contain the name and address of the person that the buyer may contact to receive a full statement of account. (§ 4254(c)(7))
- (23) If personal property is left in the motor vehicle after the specified 30-day time period, the holder may dispose of the personal property in any manner that it chooses. (§ 4255)
- (24) Upon the sale of a repossessed motor vehicle to a purchaser, a seller or holder must provide to the purchaser the title to the vehicle and all necessary documents to effect the transfer of the vehicle. (§ 4260(c))

- (25) The seller or holder must deliver a deficiency notice, containing specific provisions, to the buyer within 30 days after the sale of the repossessed motor vehicle. (§ 4261(d))
- (26) The dollar amount for attorney fees charged prior to the commencement of legal action regarding an installment sale contract for a manufactured home is raised from \$50 to \$150. (§ 4262(d)(2)(ii))

Provisions relating to the conspicuousness of headings, notices and contract provisions are located in § 4103 of the general provisions (Chapter 41). Chapter 41 also contains definitions for terms that will be used throughout Part IV (the Consumer Credit Code) and provisions regarding electronic transactions.

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CHAPTER 42 MOTOR VEHICLE SALES FINANCE

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GENERAL PROVISIONS

TITLE 12 COMMERCE and TRADE

PART IV CONSUMER CREDIT

Chapter

- 41. General Provisions
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CHAPTER 41 GENERAL PROVISIONS

Sec.

- 4101. Short title of part.
- 4102. Definitions.
- 4103. Contracts and agreements.
- 4104. Electronic transactions.

§ 4101. Short title of part.

This part shall be known and may be cited as the Consumer Credit Code.

§ 4102. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Financial institution.” A bank, bank and trust company, trust company, savings bank, private bank, savings association or credit union organized and doing business under the provisions of any law of the Commonwealth, another state or the United States.

“Department.” The Department of Banking of the Commonwealth.

“Records.” Books, accounts, papers, documents, files and other similar business records and information, including information that is:

- (1) stored in an electronic or other medium that uses technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities; and
- (2) retrievable in perceivable form.

Note

The term “state” within the definition of “financial institution” is defined in 1 Pa.C.S. § 1991 and includes the District of Columbia and the territories of the United States. Section 102(f), (g), (t), (x) and (dd) of the act of November 30, 1965 (P.L.847, No.356), as amended, known as the Banking Code of 1965, defines the terms “bank,” “bank and trust company,” “private bank,” “savings bank” and “trust company.” The term “bank” is defined as a “corporation which exists under the laws of this Commonwealth and, as a bank under the Banking Code of 1933, was authorized to engage in the business of receiving demand deposits on the effective date of this act, or which receives authority to engage in such business as a bank pursuant to this act, but which is not authorized to act as fiduciary.” The term “bank and trust company” is defined as “a corporation which exists under the laws of this Commonwealth and, as a bank and trust company under the Banking Code of 1933, was authorized to engage in the business of receiving demand deposits and to act as fiduciary on the effective date of this act, or which receives authority both to engage in such business and to act as fiduciary as a bank and trust company pursuant to this act.” The term “private bank” is defined as “an individual, partnership or unincorporated association authorized as a private bank under the Banking Code of 1933 to engage in the business of banking in this Commonwealth on the effective date of this act and an individual, partnership or unincorporated association which receives authority, pursuant to this act, to continue in the business of banking as a private bank.” The “savings bank” is defined as “a corporation with or without capital stock which exists under the laws of this Commonwealth and as a savings bank under the Banking Code of 1933 was authorized to engage in the business of receiving savings deposits on the effective date of this act or which receives authority to engage in such business as a savings bank pursuant to this act.” The term “trust company” is defined as “a corporation which exists under the laws of this Commonwealth and was authorized to act as fiduciary on the effective date of this act as a trust company under the Banking Code of 1933, or which receives

authority to act as fiduciary pursuant to this act, but which is not authorized to engage in the business of receiving deposits.” The act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967, provides for savings associations.

§ 4103. Contracts and agreements.

(a) General rule.--A contract or agreement under this part shall be dated and in writing.

(b) Clear and conspicuous provisions.--The headings, notices and language of a contract or agreement under this part shall be clear and conspicuous and meet the following requirements:

(1) Except as otherwise provided in this subsection, the language in a contract or agreement under this part shall be in at least eight-point type.

(2) A heading in a contract or agreement under this part shall be in at least ten-point bold type.

(3) A notice or disclosure in a contract or agreement under this part shall be in at least ten-point bold type.

(4) An acknowledgment under this part shall be in at least ten-point bold type.

Note

These provisions are derived from the act of July 28, 1947 (P.L.1110, No.476) as amended, known as the Motor Vehicle Sales Finance Act, and the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act. For the purposes of uniformity in this part, some of the provisions from those acts are revised by this section.

Comment

The notices referenced in §§ 4218(b) (revocation or suspension of license), 4229(c) (transfer), 4257 (notice to police) and 4345(d)(3) (finance charges) are not within the scope of subsection (b)(3).

§ 4104. Electronic transactions.

(a) Effect on other law.--Nothing in this part shall be construed to supersede the provisions of the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act.

(b) Department procedures.--The department may establish procedures for electronic transactions under this part, including:

- (1) the filing of applications and renewals for licenses and registrations;
- (2) the filing of reports and other required records; and
- (3) the verification of records and signatures on forms.

MOTOR VEHICLE SALES FINANCE

CHAPTER 42 MOTOR VEHICLE SALES FINANCE

Note

This chapter is based on the act of June 28, 1947 (P.L.1110, No.476), as amended, known as the Motor Vehicle Sales Finance Act (MVSFA).

Subchapter

- A. General Provisions
- B. Licenses
- C. Installment Sale Contracts
- D. Costs and Charges
- E. Repossession
- F. Penalties and Liability

SUBCHAPTER A GENERAL PROVISIONS

Sec.

- 4201. Short title of chapter.
- 4202. Definitions.
- 4203. Authority of department.
- 4204. Records.
- 4205. Appeals.
- 4206. Deposit of fees and fines.
- 4207. Distribution of information.
- 4208. Venue.
- 4209. Applicability.
- 4210. Mark-ups.

§ 4201. Short title of chapter.

This chapter shall be known and may be cited as the Motor Vehicle Sales Finance

Act.

Note

This section is based on § 1 of the MVSFA.

§ 4202. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Buyer.”

(1) A person who buys, hires or leases a motor vehicle under an installment sale contract or a legal successor in interest to the person, even if the person may have entered into an extension, deferment, renewal or other revision of the contract.

(2) Includes a person who as surety, endorser, guarantor or otherwise is liable on an obligation created by a buyer under an installment sale contract.

"Collateral security."

(1) Security, other than a security interest in a motor vehicle, which is the subject of an installment sale contract and given to secure performance of an obligation of a buyer or the buyer's surety or guarantor under an installment sale contract or an extension, deferment, renewal or other revision of the contract.

(2) Includes the following:

(i) The undertakings of a surety or guarantor for a buyer.

(ii) An interest in, encumbrance on or pledge of real or personal property other than the motor vehicle that is the subject of an installment sale contract.

"Collector-repossessor."

(1) A person who, as an independent contractor and not as a regular employee of an installment seller or a sales finance company, collects payments on installment sale contracts or repossesses motor vehicles that are the subject of installment sale contracts.

(2) Excludes the following:

(i) A duly constituted public official or an attorney-at-law acting in an official capacity.

(ii) A licensed seller or licensed sales finance company making collections or repossessions on installment sale contracts, if the seller or sales finance company:

(A) was previously a holder; or

(B) was not a holder but occasionally makes collections or repossessions

for other licensed sellers or licensed sales finance companies.

"Commercial purpose." A purpose related to the production, exhibition, marketing, transportation, processing or manufacture of goods or services.

"Debt cancellation agreement." A contractual arrangement in which a person agrees to pay all or part of a buyer's obligation to repay an extension of credit from a holder upon the occurrence of a specified event.

"Debt suspension agreement." A contractual arrangement in which a person agrees to pay for a specific period of time all or part of a buyer's obligation to repay an extension of credit from a holder upon the occurrence of a specified event.

"Down payment." Partial payments made in cash or otherwise and received by or for the benefit of an installment seller prior to or substantially contemporaneous with either the execution of an installment sale contract or the delivery of the items sold under the contract, whichever occurs later.

"Finance charge." Either of the following:

(1) The amount of the consideration in excess of the purchase price, which a buyer is required to pay to an installment seller for:

(i) the privilege of purchasing a motor vehicle under an installment sale contract; or

(ii) the credit extended by the seller to the buyer in conjunction with the sale of a motor vehicle under an installment sale contract.

(2) The difference between the cash sale price of the motor vehicle and the time balance, exclusive of insurance charges, late charges and other charges that are necessary or incidental to an installment sale and specifically authorized by this chapter to be included in an installment sale contract.

"Heavy commercial motor vehicle." A new or used motor vehicle, excluding a recreational vehicle, that is:

(1) a truck or truck tractor having a manufacturer's gross vehicular weight of 13,000 pounds or more; or

(2) a semi-trailer or trailer designed for use in combination with a truck or truck tractor.

"Holder." An installment seller or a sales finance company with the rights of the installment seller under the installment sale contract.

"Installment sale contract."

(1) A contract for the retail sale of a motor vehicle, or a contract that has a similar purpose or effect, whether or not the installment seller has retained a security interest in the motor vehicle or has taken collateral security for a buyer's obligation, if:

(i) all or part of the purchase price is payable in two or more scheduled payments subsequent to the making of the contract; or

(ii) a buyer undertakes to make two or more scheduled payments or deposits that may be used to pay all or part of the purchase price.

(2) Includes any form of contract, however nominated, for the bailment or leasing of a motor vehicle, which contains both of the following, or any other arrangement having a similar purpose or effect:

(i) The buyer contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle.

(ii) Ownership of the motor vehicle may be transferred to the buyer.

(3) Includes and applies to an extension, deferment, renewal or other revision of the installment sale contract.

(4) Excludes the following:

(i) A sale or contract for sale upon an open book account, if both of the following conditions are met:

(A) The installment seller has not retained or taken a security interest in the motor vehicle sold or a collateral security for the buyer's obligation.

(B) The buyer:

(I) is not required to pay a sum other than the purchase price of the motor vehicle sold in connection with the sale or extension of credit; and

(II) is obligated to pay for the motor vehicle in full within 90 days from the time the sale or contract for sale was made.

(ii) A right to acquire possession of goods pursuant to a lease, unless the lease:

(A) constitutes a security interest as defined in 13 Pa.C.S. section 1201 (relating to general definitions); and

(B) is subject to 13 Pa.C.S. Div. 9 (relating to secured transactions).

“Installment seller.” A person engaged in the business of selling, hiring or leasing a motor vehicle under an installment sale contract or a legal successor in interest to the person.

"Insurance charges." Premiums, commissions and other payments authorized by insurance statutes or regulations of the Commonwealth.

"Licensee." A person who under this chapter has been issued a license as an installment seller, a sales finance company or a collector-repossessor, which license has not expired and has not been surrendered or revoked.

“Manufactured home.” As defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974 (Public Law 93-383, 42 U.S.C. § 5402(6)), as amended.

"Motor vehicle."

(1) A device in which, upon which or by which a person or property is or may be transported or drawn upon a public highway.

(2) Includes a trailer, semi-trailer, manufactured home and recreational vehicle.

(3) Excludes the following:

(i) A tractor, a power shovel, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway.

(ii) A device that moves upon or is guided by a track or travels through the air.

"Principal amount financed." The unpaid purchase price balance plus the following:

(1) The charges for any insurance required or obtained as security for or by reason of the sale of a motor vehicle under an installment sale contract.

(2) Other costs or charges necessary or incidental to the sale of the motor vehicle under an installment sale contract.

(3) Amounts representing payment of a prior credit or lease balance to discharge a security interest, lien or lease interest on a motor vehicle or other property traded or returned.

"Purchase price." The price measured in dollars at which an installment seller would in good faith sell to a buyer, and the buyer would in good faith buy from the seller, a motor vehicle that is the subject matter of an installment sale contract, if the sale were a cash sale instead of an installment sale.

"Recreational vehicle." As defined in section 2 of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

"Retail sale." The sale of a motor vehicle for the buyer's use or another's use from which the buyer derives a benefit or satisfaction.

"Sales finance company."

(1) A person engaged as principal, agent or broker in the business of financing or soliciting the financing of an installment sale contract made between other parties.

(2) Includes the following:

(i) A person in the business of acquiring, investing in or lending money or credit on the security of an installment sale contract or any interest in the contract, whether by discount, purchase or assignment of the contract, or otherwise.

(ii) An installment seller, whether or not licensed under this chapter, who finances an installment sale contract for another seller or a sales finance company.

(3) Excludes a person to the extent that the person is exempt under section 4229(e) (relating to transfer).

"Security interest." A security interest as provided by 13 Pa.C.S. Div. 9.

"Service contract." A written contract, optional on the part of a buyer, to perform over a fixed period of time or for a specified duration services regarding the maintenance or repair of a motor vehicle.

"Time balance." The sum of the principal amount financed and the finance charge.

"Unpaid purchase price balance." The difference between the purchase price and the down payment.

"Warranty."

(1) Either of the following, which becomes part of the basis of the bargain between a buyer and an installment seller for purposes other than resale:

(i) A written declaration of fact or written promise made in connection with the sale of a motor vehicle by an installment seller or manufacturer to a buyer that relates to the nature of the materials or workmanship regarding the motor vehicle and affirms or promises that the motor vehicle is free of defects or will meet a specified level of performance over a specified period of time.

- (ii) Any undertaking in writing in connection with the sale of a motor vehicle by an installment seller or manufacturer to refund, repair, replace or take other remedial action with respect to the motor vehicle if the motor vehicle fails to meet the specifications set forth in the undertaking.
- (2) Excludes a service contract and an extended warranty with the characteristics of a service contract.

Note

The definition of “buyer” is based on § 3(3) of the MVSFA (“installment buyer” or “buyer”). The definition of “collateral security” is based on § 3(17) of the MVSFA. The definition of “collector-repossessor” is based on § 3(7) of the MVSFA. The definition of “commercial purpose” is based on § 3(20) of the MVSFA. The definition of “debt cancellation agreement” is based on § 3(24) of the MVSFA. The definition of “debt suspension agreement” is based on § 3(25) of the MVSFA. The definition of “down payment” is based on § 3(12) of the MVSFA. The definition of “finance charge” is based on § 3(14) of the MVSFA. The definition of “heavy commercial motor vehicle” is based on § 3(22) of the MVSFA, except that the manufacturer’s gross vehicular weight of “13,000” replaces “15,000,” to make it consistent with the Federal Motor Carrier Safety regulations for commercial motor vehicles. The definition of “holder” is based on § 3(5) of the MVSFA. The definition of “installment sale contract” is based on § 3(10) of the MVSFA (“installment sale contract” or “contract”). The definition of “installment seller” is based on § 3(4) of the MVSFA (“installment seller” or “seller”). The definition of “insurance charges” is based on § 3(13.2) of the MVSFA (“charges for insurance”). The definition of “licensee” is based on § 3(19) of the MVSFA. The definition of “motor vehicle” is based on § 3(1) of the MVSFA. The definition of “principal amount financed” is based on § 3(13) of the MVSFA. The definition of “purchase price” is based on § 3(11) of the MVSFA (“cash price”). The definition of “retail sale” is based on § 3(9) of the MVSFA. The definition of “sales finance company” is based on § 3(6) of the MVSFA. The definition of “security interest” is based on § 3(16) of the MVSFA. The definition of “time balance” is based on § 3(15) of the MVSFA.

The terms “recreational vehicle,” “service contract,” “unpaid purchase price balance” and “warranty” are not defined in the MVSFA.

A “recreational vehicle” under the Board of Vehicles Act (63 P.S. § 818.2) is “a vehicle primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The term includes a travel trailer, park model trailer, slide-in camper, camping trailer and motor home [, which is a vehicle designed to provide temporary living quarters, built into an integral of, or permanently attached to, a self-propelled vehicle chassis or van].”

The term “department,” which is defined in § 3(18) of the MVSFA, is not defined in this section but rather in § 4102. The term “financial institution,” which is based on the definition of “banking institution” in § 3(8) of the MVSFA, is not defined in this section but rather in § 4102 and includes credit unions. The term “records,” which is based on § 11 of the MVSFA and in part on the definitions in the act of December 16, 1999 (P.L.971, No.69), known as the Electronic Transactions Act, is not defined in this section but rather in § 4102.

The term “person,” which is defined in § 3(2) of the MVSFA, is not defined in this section because the term is defined in 1 Pa.C.S. § 1991 to include a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person. The terms “charges” and “secretary,” which are defined in § 3(13.1) and (23) of the MVSFA, are eliminated as unnecessary, due to the restructuring of this chapter.

Unlike the MVSFA, this chapter does not define or reference “mobile homes.” Within the manufactured housing industry, the term “manufactured home” has taken the place of “mobile home.” As a general rule, sellers and sales finance companies will not finance an older “mobile home” under the MVSFA; therefore, this chapter does not carry forward that concept. If there is a situation involving the financing of an older mobile home after the adoption of this chapter, such financing would be governed by the provisions of the Goods and Services Installment Sales Act.

Section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974 (Public Law 93-383, 42 U.S.C. § 5402(6)), as amended, defines “manufactured home” as “a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to

the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary [of Housing and Urban Development] and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.”

The term “late charge” in this chapter replaces the term “default charge” from the MVSFA.

Comment

Under the definitions of “debt cancellation agreement” and “debt suspension agreement,” a person includes a third party, the seller and the seller’s subsidiary. For purposes of calculating interest rates under this chapter, the definition of “finance charge” applies. However, Regulation Z, adopted under the Federal Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.), governs disclosure of finance charges, and its definition of “finance charge” applies for that purpose. Under the definition of “heavy commercial motor vehicle,” the stated gross vehicular weight of 13,000 is consistent with the Federal Motor Carrier Safety regulations for heavy commercial motor vehicles. Paragraph (2) of the definition of “installment sale contract” includes a loan, mortgage, conditional sale contract, purchase-money chattel mortgage and hire-purchase agreement, which were enumerated in § 3(10) (definition of “installment sale contract” or “contract”) in the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act. The codification and technical amendments to the definition of “installment sale contract” under this section are not intended to change previous law. The definition of “motor vehicle” explicitly includes a manufactured home and recreational vehicle. The term “purchase price” in this section is the same as “cash price” in Regulation Z. An extended warranty is intended to be considered a “service contract” if it has the same characteristics as a service contract; it is not a “warranty.” A service contract is optional on the part of the buyer.

§ 4203. Authority of department.

(a) Powers.--The department has the authority to do the following:

(1) Investigate at any time the business activities of a licensee and person engaged in a business contemplated by this chapter by the following means:

(i) Examining the records of the licensee and person.

(ii) Accessing the offices and places of business of the licensee and person and the records of the licensee and person.

(2) Examine the records, safes and vaults of a person described in subsection (b)(2), for the purpose of discovering violations of this chapter.

(3) Require the attendance and testimony of witnesses and the production of records relating to a business that the department has the authority to investigate.

(4) Prescribe the minimum information to be shown in the records of a licensee so as to enable the department to determine compliance with the provisions of this chapter.

(5) Promulgate regulations and issue orders, statements of policy and written interpretations as necessary or appropriate for the interpretation or enforcement of this chapter.

(6) Reduce the amount of or prohibit entirely a cost regarding the retaking, storing or repairing of a motor vehicle under section 4256 (relating to buyer's liability for costs) if the cost:

(i) appears to be fictitious, unnecessary, unreasonable or exorbitant; or

(ii) would not have been incurred by a prudent person under similar circumstances.

(7) Adopt a statement of policy that contains guidelines determining mark-ups that the department finds, after reasonably considering relevant market data, not to be

excessive and update and revise the statement of policy to reflect changing business conditions.

(b) Applicability.--

(1) This section applies whether the person acts or claims to act as principal, agent or broker, either under or without the authority of this chapter.

(2) A person who is not licensed under this chapter is presumed to be engaged in a business contemplated by this chapter, if the person, as principal, agent or broker, advertises or solicits business for which a license is required by the provisions of this chapter.

(c) Administration.--

(1) For the purposes of subsection (a)(3), a duly authorized representative of the department may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence.

(2) In the case of disobedience of a subpoena or the non-cooperation of a witness appearing before the department, the department may invoke the aid of the courts, and the court shall issue an order requiring the person subpoenaed to obey the subpoena, give evidence or produce records relative to the matter in question. Failure to obey the court order may be punished by the court as contempt.

(d) Expenses.--The expenses incurred by the department in connection with an examination or investigation, including a proportionate part of the salary of an examiner or other employee of the department and counsel assigned by the department, may be assessed by the department upon the particular person examined or investigated.

Note

Subsection (a)(1), (2) and (3) is based on § 11(A) and (B) of the MVSFA. Subsection (a)(4) is based on § 12(E) of the MVSFA. Subsection (a)(5) is based on § 37.1 of the MVSFA. Subsection (a)(6) is based on § 23(F) of the MVSFA. Subsection (a)(7) is based on the second sentence of § 10(A)(14) of the MVSFA. See also § 4210. Subsection (b) is based on § 11(A) of the MVSFA. Subsection (c) is based on § 11(B) of the MVSFA. Subsection (d) is based on § 11(C) of the MVSFA.

§ 4204. Records.

(a) General rule.--A licensee shall maintain, at the place of business designated in the license certificate, records of the business conducted under the license issued for the place of business so as to enable the department to determine whether the licensee's business contemplated by this chapter is being operated in accordance with the provisions of this chapter.

(b) Multiple places of business.--A licensee, operating two or more licensed places of business in the Commonwealth, may maintain the general control records of all the offices at any one of the offices, or at any other office maintained by the licensee, upon the following:

(1) The filing of a written request with the department designating the office at which the control records are maintained.

(2) Approval of the request by the department.

(c) English language.--Records of a licensee shall be maintained in the English language.

(d) Preservation.--Records of a licensee shall be preserved and available for examination by the department for at least two years after making the final entry therein.

Note

This section is based on § 12(A) through (D) of the MVSFA.

§ 4205. Appeals.

An appeal may be taken from the action of the department in suspending and revoking a license under section 4218 (relating to revocation or suspension of license) or imposing a civil penalty under section 4274 (relating to civil penalty by department) in accordance with the procedure prescribed by 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

Note

This section is based on § 10(D) of the MVSFA.

§ 4206. Deposit of fees and fines.

License fees and fines that are received by the department under this chapter shall be deposited in the State Treasury to the credit of a special fund for the use of the department in administering this and other laws of the Commonwealth placed under its administration.

Note

This section is based on § 7(E) of the MVSFA.

§ 4207. Distribution of information.

(a) Department.--The department shall provide a copy of the provisions of this chapter to each licensee in conjunction with the licensee's initial license and all renewal applications.

(b) Licensee.--

(1) A licensee shall make the information under subsection (a) available to its employees.

(2) A copy of the information under subsection (a) shall be kept at the licensee's place of business for inspection by a buyer.

Note

This section is not contained in the MVSFA.

Comment

A licensee does not necessarily need to keep a copy of the provisions of this chapter in a visible place. However, a buyer must in some fashion be made aware of the presence of a copy of the law, so that the buyer upon request may review the information.

§ 4208. Venue.

An action on an installment sale contract shall be commenced in a county where any of the following occurred:

- (1) The buyer signed the contract.
- (2) The buyer resides at the commencement of the action.
- (3) The buyer resided when the contract was entered into.

Note

This section is not contained in the MVSFA.

§ 4209. Applicability.

(a) Consumer discount companies.--The provisions of this chapter do not affect or impair a business conducted lawfully under a license issued under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, as amended.

(b) Other extensions of credit.--The provisions of this chapter do not apply to an extension of credit for the purchase of a motor vehicle, including the financing of other costs or charges necessary or incidental to the sale or financing of a motor vehicle, made under the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

Note

This section is based on § 36 of the MVSF.A.

§ 4210. Mark-ups.

(a) General rule.--A mark-up that is consistent with the guidelines set by the department is not excessive.

(b) Excessive mark-up.--

(1) A mark-up in excess of the guidelines set by the department shall be deemed excessive.

(2) Until the department adopts its guidelines, a mark-up for a service contract, warranty, debt cancellation agreement and debt suspension agreement in excess of 100% of the cost to the dealer shall be deemed excessive.

Note

Subsection (a) is based on the third sentence of § 10(A)(14) of the MVSF.A. Subsection (b) is based on the last sentence of § 10(A)(14) of the MVSF.A.

SUBCHAPTER B
LICENSES

Sec.

4211. General license rules.

4212. Initial license application.

4213. Bond.

- 4214. License fees.
- 4215. License certificate.
- 4216. License renewal.
- 4217. Refusal to issue license or license renewal.
- 4218. Revocation or suspension of license.
- 4219. Multiple places of business.

§ 4211. General license rules.

(a) License required.--The following persons may engage or continue to engage in the Commonwealth as a principal, employee, agent or broker only as authorized in this chapter and under a license issued by the department:

- (1) An installment seller.
- (2) A sales finance company.
- (3) A collector-repossessor.

(b) Term.--

(1) Subject to paragraph (2), unless revoked or suspended under section 4218 (relating to revocation or suspension of license) or otherwise surrendered, a license shall be valid for one year.

(2) A license shall expire on October first annually, after the license is initially approved or renewed.

(c) Transfer; assignment.--A license may not be transferred or assigned.

Note

Subsection (a) is based on § 4 of the MVSFA. Subsection (b) is based on the first sentence of § 7(D) of the MVSFA. Subsection (c) is based on § 8(B) of the MVSFA.

§ 4212. Initial license application.

(a) General rule.--An initial license application shall be in writing, under oath and in the form prescribed by the department.

- (b) Contents.--An initial license application shall contain the following:
- (1) The name under which the business is conducted.
 - (2) The physical street address of the place of business.
 - (3) The date of registration with the Secretary of the Commonwealth of any fictitious or trade name of the business.
 - (4) If the applicant is a corporation:
 - (i) the date and place of incorporation; and
 - (ii) the names and addresses of the officers and directors.
 - (5) If the applicant is an individual owner, the name and residence address of the owner.
 - (6) If the applicant is a partnership, association or limited liability company, the name and residence address of each owner, partner or member and any managers.
 - (7) Any other information that the department requires.
- (c) Process; notice.--
- (1) An application filed by an association or corporation shall be accompanied by a power of attorney showing the name and address of the authorized agent in the Commonwealth upon whom judicial and other process or legal notice may be served.
 - (2) The department is authorized to accept service of process or notice if the agent in paragraph (1):
 - (i) has died;
 - (ii) is removed from the Commonwealth; or
 - (iii) is under a legal disability or otherwise disqualified from serving as agent.

Note

Subsection (a) is based on § 5(A) of the MVSFA. Subsection (b) is based on § 5(B) of the MVSFA. Subsection (c) is based on § 5(C) of the MVSFA.

Comment

An initial license application requires the physical street address of the place of business; listing a post office box is not adequate.

§ 4213. Bond.

(a) Bond required.--A bond shall accompany each license application for a sales finance company and collector-repossessor.

(b) Form.--The bond shall be in the form prescribed by the department.

(c) Amount.--

(1) A bond for a sales finance company shall be in the amount of \$10,000.

(2) A bond for a collector-repossessor shall be in the amount of \$5,000.

(d) Execution.--

(1) Except as provided in paragraph (2), the bond shall be executed by a surety company authorized by the laws of the Commonwealth to transact business.

(2) If the bond accompanying a license application for a sales finance company is filed by a financial institution within the Commonwealth, the financial institution may execute the bond on its own behalf.

(3) The bond shall be executed to the Commonwealth.

(e) Purpose.--The bond shall be for the use of the Commonwealth and for any person aggrieved by the misconduct of the licensee.

(f) Condition.--The condition of the bond is that the licensee will:

(1) comply with and abide by the provisions of this chapter and the rules and regulations of the department; and

(2) pay to the Commonwealth, the department or a person all money due to each under the provisions of this chapter.

(g) Action on bond.--A person may maintain an action on the bond in a court having jurisdiction of the amount claimed if all the following occur:

(1) The person is aggrieved by the misconduct of a licensee.

(2) The person receives a judgment against the licensee for the misconduct.

(3) The person executes on the judgment.

(4) The department assents to the action on the bond.

Note

This section is based on § 6(A) of the MVSFA. Unlike the MVSFA, subsection (c) contains different bond amounts for a sales finance company and a collector-repossessor. The amount of the bond for a sales finance company has been increased from \$5,000 to \$10,000. The following comment is based on the second sentence of § 6(A) of the MVSFA.

Comment

The bond under subsection (d)(2) does not need to be executed by a surety company.

§ 4214. License fees.

(a) Amount.--A license application shall be accompanied by a license fee as set forth in section 603-A of the act of April 9, 1929 (P.L.177, No.175), as amended July 1, 1990 (P.L.277, No.67), known as the Administrative Code of 1929.

(b) Abatement.--No abatement in the amount of the license fee shall be made if the license is:

- (1) issued for less than one year; or
- (2) surrendered, cancelled or revoked prior to the expiration of the license period for which the license was issued.

Note

Subsection (a) is based on § 7(A) of the MVSEFA. Subsection (b) is based on § 7(C) of the MVSEFA.

§ 4215. License certificate.

(a) Issuance.--If the department approves an applicant's license application, it shall issue to the applicant a license certificate showing the name and address of the person authorized to do business under the license.

(b) Public inspection.--

(1) An installment seller and a sales finance company shall post the license certificate in a conspicuous place in the place of business of the licensee, so that the certificate is in full view of the public at all times.

(2) A collector-repossessor shall carry the license certificate in his or her immediate possession whenever engaged in the type of business for which the license is issued, so that the certificate may be presented for inspection upon request by any person entitled to inspection.

(c) Amendment.--

(1) A licensee desiring to change the address of the place of business shall:

- (i) give prior written notice to the department;
- (ii) return the license certificate to the department for amendment; and
- (iii) retain a copy of the license certificate.

(2) The department shall amend the license certificate to show the new address and the date. The new address shall thereafter be the authorized address of the licensee.

(3) A licensee is not required to pay a charge for amendment of a license certificate to effect a change of address.

Note

Subsections (a) and (b) are based on § 8(A) of the MVSFA. Subsection (c) is based on § 8(C) of the MVSFA. Subsection (c)(1)(iii) represents standard practice but was not contained in the MVSFA.

§ 4216. License renewal.

An application for a license renewal shall have the following characteristics:

(1) The application shall be in writing, under oath and in the form prescribed by the department.

(2) The application shall be filed at least 15 days prior to October first.

(3) The application shall include an update of the information under section 4212(b) and (c)(1) (relating to initial license application).

(4) The application shall be accompanied by the following:

(i) A new bond under the same provisions as set forth in section 4213 (relating to bond), which shall be filed annually at least 15 days prior to October first.

(ii) A license fee under the same provisions as set forth in section 4214 (relating to license fees), which shall be paid annually on or before October first for each license and place of business.

Note

Paragraph (1) is based on § 5(A) of the MVSFA. Paragraph (2) is based on § 5(E) of the MVSFA. Paragraph (3) is not contained in the MVSFA. Paragraph (4)(i) is based on § 6(C) of the MVSFA. Paragraph (4)(ii) is based on the second sentence of § 7(D) of the MVSFA.

§ 4217. Refusal to issue license or license renewal.

(a) Discretionary refusal.--Subject to subsection (b), the department may refuse to issue a license or renew a license because of any of the following:

(1) The applicant has made a material misstatement in the application for license or license renewal.

(2) The existence of any of the grounds under section 4218(a) (relating to revocation or suspension of license).

(3) The department is not satisfied that the financial responsibility, character, reputation, integrity and general fitness of the applicant command the confidence of the public and warrant the belief that the business for which the license application is filed will be operated lawfully, honestly, fairly and in accordance with this chapter and the general laws of the Commonwealth. In so determining, the department shall consider the applicant's:

(i) owners, partners or members and any managers, if the applicant is a partnership, association or limited liability company; and

(ii) officers and directors, if the applicant is a corporation.

(b) Mandatory refusal.--

(1) The department may not issue a license to an applicant under this chapter until the expiration of at least one year from the effective date of any revocation of the

applicant's license or the department's refusal to issue a license or license renewal to the applicant.

(2) The department may not issue a license or renew a license if, within ten years of the date of license application or license renewal application, the applicant or the applicant's affiliate, owner, partner, member, officer, director, employee or agent has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of a violation under section 4271 (relating to operating without license) or section 37(A) of the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

(3) Subject to paragraph (4), if an applicant's license was previously revoked under this chapter or the Motor Vehicle Sales Finance Act, the department may not issue another license to the applicant if, within ten years of the date of license application, the applicant or the applicant's affiliate, owner, partner, member, officer, director, employee or agent has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of any violation of this chapter or the Motor Vehicle Sales Finance Act.

(4) If an applicant's license was previously revoked under the Motor Vehicle Sales Finance Act solely on the basis of the conduct of the applicant's spouse, paragraph (3) is not applicable.

(c) License fee.--

(1) Except as provided in paragraph (2), if the department rejects a license application or license renewal application, it shall return the license fee that accompanied the application.

(2) The department may retain all or part of the license fee if the license application or license renewal application was rejected based wholly or partially on false information furnished by the applicant in the application.

Note

Subsection (a) is based on § 9(A) of the MVSFA. Subsection (b)(1) is based on § 10(C) of the MVSFA. Subsection (b)(2) is based on § 9(A)(3) of the MVSFA. Subsection (b)(3) is based on §§ 9(A)(3) and 10(C) of the MVSFA. Subsection (b)(2) and (3) does not include “spouse,” which is included in the MVSFA, and changes the phrase “has been found guilty by a judge or a jury” from the MVSFA to “has been convicted.” Unlike § 9(A) of the MVSFA, subsection (b)(2) and (3) contains a time frame of 10 years. Subsection (b)(4) is not contained in the MVSFA. Subsection (c) is based on § 9(C) of the MVSFA.

Comment

The inclusion of the phrase “in the past ten years” in subsection (b)(2) and (3) is intended to limit the ability of the department to penalize a person for offenses that occurred in the distant past. It is not the intent of this subsection to punish a person indefinitely for past misconduct.

§ 4218. Revocation or suspension of license.

(a) Grounds.--Upon notice under subsection (b), the department may revoke or suspend a license if it discovers a fact or condition that, had it existed or been discovered at the time of filing of any license application, would have warranted disapproval of the application or if it finds that the licensee has engaged in any of the following:

- (1) Made a material misstatement in the license application.
- (2) Violated a provision of this chapter.
- (3) Violated an order or regulation issued by the department under and within the authority of this chapter.

(4) Failed to comply with a demand, order or regulation of the department lawfully made by the department under and within the authority of this chapter.

(5) Refused or refuses to permit the department to make examinations authorized by this chapter.

(6) Failed to maintain in effect the bond required under section 4213 (relating to bond), in the case of a sales finance company and collector-repossessor.

(7) Failed to maintain satisfactory records required by this chapter or prescribed by the department.

(8) Falsified records required by this chapter to be maintained of the business contemplated by this chapter.

(9) Failed to file a report with the department within the time stipulated in this chapter.

(10) Failed to pay the fine required by this chapter for failure to file reports to the department within the time stipulated.

(11) Defrauded a buyer to the buyer's damage or willfully failed to perform a written agreement with a buyer.

(12) With respect to the tax or fee due the Commonwealth upon the sale of a motor vehicle:

(i) Failed to collect the tax or fee.

(ii) Collected the tax or fee and failed to issue a true copy of the tax report to the purchaser, as required by law.

(iii) Issued a false or fraudulent tax report or copy thereof.

(iv) Failed to pay the tax or fee to the Commonwealth at the time and in the manner required by law.

(13) Engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with a business regulated by this chapter, including making excessive mark-ups as set forth in this chapter.

(b) Notice.--

(1) The department shall provide 30 days' written notice to the licensee for a revocation or suspension of a license.

(2) The notice under this subsection shall be forwarded by registered mail to the place of business of the licensee, as shown in the license application or as amended on the license certificate in case of change of address subsequent to issuance of the license certificate.

Note

The introductory language to subsection (a) is based on the introductory language of § 10(A) of the MVSFA and on § 10(A)(12) of the MVSFA. Subsection (a)(1) through (11) is based on § 10(A)(1) through (11) of the MVSFA. Subsection (a)(12) is based on § 10(A)(13) of the MVSFA. Subsection (a)(13) is based on the first sentence of § 10(A)(14) of the MVSFA. Subsection (b) is based on the introductory language of § 10(A) of the MVSFA.

§ 4219. Multiple places of business.

(a) License application.--A separate license application under section 4212 (relating to initial license application) shall be filed for each place of business conducted by or to be established by a licensee within the Commonwealth.

(b) Bond.--A bond under section 4213 (relating to bond) shall be filed for each place of business conducted by a sales finance company and a collector-repossessor within the Commonwealth.

(c) License fee.--With respect to section 4214 (relating to license fees), a separate license fee in the same amount shall be paid for each place of business conducted by a licensee within the Commonwealth.

(d) Requirements.--

(1) Except as provided in paragraph (2), only one place of business may be operated under the same license.

(2) For an installment seller, only one license is required if:

(i) every place of business is conducted under one name; and

(ii) the business records are kept in one place.

(3) A licensee may operate more than one place of business only after performing the following actions:

(i) Filing an application for each additional place of business.

(ii) Furnishing a bond for each additional place of business in the case of a sales finance company and collector-repossessor.

(iii) Paying the respective license fee for each place of business.

(e) License suspension and revocation.--

(1) Subject to paragraph (2), the department may revoke or suspend only the particular license to which grounds exist under section 4218(a) (relating to revocation or suspension of license).

(2) If the department finds that grounds for revocation are of general application to all places of business or more than one place of business operated by a licensee, it may revoke all the licenses issued to the licensee or those licenses to which grounds exist.

Note

Subsection (a) is based on § 5(D) of the MVSFA. Subsection (b) is based on § 6(B) of the MVSFA. Subsection (c) is based on § 7(B) of the MVSFA. Subsection (d) is based on § 8(D) of the MVSFA. Subsection (e) is based on § 10(B) of the MVSFA.

SUBCHAPTER C
INSTALLMENT SALE CONTRACTS

Sec.

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§ 4221. Requirements.

(a) General rule.--An installment sale contract shall:

(1) be in writing;

(2) contain all the agreements between a buyer and an installment seller relating to the installment sale of the motor vehicle sold;

(3) be signed by the buyer and seller; and

(4) be complete as to all essential provisions before the buyer signs the contract.

(b) Copies.--

(1) The installment seller shall furnish an exact copy of the installment sale contract without charge to the buyer at the time the buyer signs the contract.

(2) The buyer's copy of the contract shall contain the signature of the seller identical to the signature on the original contract.

(3) Upon request, a holder shall furnish to the buyer a duplicate copy of the contract upon payment of a reasonable fee not to exceed the cost of production.

(c) Acknowledgment.--

(1) The installment seller shall obtain from the buyer a written acknowledgment of the buyer's receipt of a copy of the contract.

(2) The acknowledgment shall be:

(i) printed below the buyer's signature to the contract, if attached to the contract; and

(ii) independently signed by the buyer.

(d) Equal periods and amounts.--An installment sale contract shall provide for payment of the time balance in substantially equal periods and amounts except in the following instances:

(1) The buyer expects his or her income to vary because of seasonal employment, seasonal sales, use of accelerated depreciation for tax purposes or other known cause,

in which case the contract may provide for payment of the time balance in amounts that vary with the expected varying income.

(2) The sale of a heavy commercial motor vehicle.

(3) The sale of a motor vehicle to a salesperson licensed under the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

(4) When the contract provides for fixed residual value financing.

(e) Disclosures.--

(1) Prior to a buyer's execution of an installment sale contract, an installment seller shall provide to the buyer an oral and a written disclosure in plain language.

(2) The written disclosure shall:

(i) be separate from the contract to be signed by the buyer;

(ii) be complete without any blank spaces; and

(iii) advise that the purchase of specific items related to acquiring the motor vehicle is voluntary and not required as a condition of the buyer's receiving the installment sale contract loan. The items:

(A) include a service contract, warranty, debt cancellation agreement, debt suspension agreement and insurance products not required by section 4241 (relating to insurance); and

(B) exclude an option or accessory physically attached to the motor vehicle.

(3) The completed written disclosure shall be copied exactly and furnished by the seller to the buyer at no cost when the buyer receives a copy of the contract.

(f) Definition.--As used in this section, the term "fixed residual value financing" means the manner of purchase whereby a buyer who is listed as the owner on the motor vehicle title agrees to select and perform, at the conclusion of a predetermined schedule of installment payments made in substantially equal periods and amounts, one of the following options:

- (1) Satisfy the balance of the contractual amount owing.
- (2) Refinance any balance owing on the terms previously agreed upon at the time of executing the installment sale contract.
- (3) Surrender the motor vehicle at the time and manner agreed upon at the time of executing the contract.

Note

Subsection (a) is based on § 13(A) and (B) of the MVSFA. Subsection (b)(1) and (2) is based on § 13(C) of the MVSFA. Subsection (b)(3) is based on § 28(C) of the MVSFA. Under § 28(C) of the MVSFA, the holder was required to furnish the buyer with a duplicate copy upon payment of \$0.50. Subsection (b)(3) replaces that concept with "a reasonable fee not to exceed the cost of production." Subsection (c) is based on § 13(E) of the MVSFA. This subsection does not contain the requirement in § 13(E) that the acknowledgment be "printed in 12-point type or larger"; that and similar provisions have been relocated to § 4103. Subsection (d) is based on § 13(F) of the MVSFA. Subsection (e) is based on § 13(G) of the MVSFA. Subsection (f) is based on § 13(F)(4) of the MVSFA.

§ 4222. Contents.

An installment sale contract shall contain the following:

- (1) The full name and address of all the parties to the contract.
- (2) The date that the buyer signed the contract.
- (3) A description of the motor vehicle sold, which shall be sufficient for accurate identification.

(4) The notice under section 4223 (relating to notice).

(5) The following items in writing and in a clear and conspicuous manner, with each component of each subparagraph listed separately:

(i) The purchase price of the motor vehicle, which shall include the following:

(A) Taxes.

(B) Charges for delivery.

(C) Charges for servicing, repairing or improving the motor vehicle.

(D) Charges for a service contract, which:

(I) shall appear as separate items after the following or substantially similar words, which shall be boldface, underlined, adjacent to the purchase price and in type print size not smaller than that used for all item categories: “including optional service contracts and/or extended warranties in the amount of”; or

(II) may instead be separately included as “other charges” under subparagraph (v).

(E) Charges for accessories and installation.

(F) Other charges normally included in the delivered purchase price of a motor vehicle.

(ii) The down payment made by the buyer at the time of or prior to execution of the contract, which shall separately indicate the extent to which it is made in cash or represented by either or both of the following:

(A) The agreed-upon value of a trade-in motor vehicle, along with a description of the trade-in sufficient for accurate identification.

(B) Other goods.

(iii) The unpaid purchase price balance, which is the difference between the following:

(A) The purchase price under subparagraph (i).

(B) The down payment under subparagraph (ii).

(iv) Insurance charges, the payment for which the seller agrees to extend credit to the buyer, which shall set forth the term of insurance, a concise description of the coverage and the amount of the premium.

(v) Other charges, necessary or incidental to the sale or financing of a motor vehicle:

(A) which the seller contracts to retain, receive or pay on behalf of the buyer; or

(B) under the contract for which the seller agrees to extend credit to the buyer as authorized by this chapter, including charges for a debt cancellation agreement and debt suspension agreement.

(vi) The principal amount financed, which is the sum of the following:

(A) The unpaid purchase price balance under subparagraph (iii).

(B) The insurance charges under subparagraph (iv).

(C) The other charges under subparagraph (v).

(D) Amounts representing payment of a prior credit or lease balance to discharge a security interest, lien or lease interest on a motor vehicle or other property traded or returned.

(vii) The finance charge, which is the consideration in excess of the purchase price under subparagraph (i), excluding insurance charges under subparagraph (iv) and other charges under subparagraph (v), and which the buyer agrees to pay to the seller for the privilege of purchasing the motor vehicle under the installment sale contract.

(viii) The time balance, which represents the total obligation of the buyer and which is the sum of the following:

(A) The principal amount financed under subparagraph (vi).

(B) The finance charge under subparagraph (vii).

(ix) The payment schedule, which shall state the number, amount and timing of the payments required to liquidate the time balance.

(6) A description that reasonably identifies collateral security in which a security interest is provided to secure the buyer's obligation pursuant to 13 Pa.C.S. section 9108 (relating to sufficiency of description), including the motor vehicle and other collateral.

(7) A summary notice of the buyer's principal legal rights regarding prepayment of the contract, rebate of finance charge and reinstatement of the contract in the event of repossession and notice of the right to receive the statement of account under section 4230(a) (relating to statement of account to buyer).

(8) Specific provisions regarding the following:

(i) The holder's right to accelerate the maturity of the contract upon default or other breach of contract.

(ii) The buyer's liability respecting nonpayment.

(iii) The dollar or percentage amount of late charges that may be imposed due to a late payment, other than a deferral or extension charge.

(iv) Repossession and sale of the motor vehicle, in case of default or other breach of contract.

(9) The following statement:

“If you encounter a problem, you may have additional rights under the Unfair Trade Practices and Consumer Protection Law, which is administered by the Office of the Pennsylvania Attorney General.”

Note

Paragraphs (1), (2) and (3) are based on § 14(A) of the MVSFSA. Paragraph (4) is based on § 13(D). Paragraph (4) does not contain the requirement in § 13(D) that the notice be “printed in 12-point type or larger”; that and similar provisions have been relocated to § 4103. Paragraph (5)(i) through (ix) is based on § 14(B)(1) through (9) of the MVSFSA. Paragraph (5)(iv) does not contain language regarding estimated insurance charges. Paragraph (5)(viii) does not contain the phrase “that he or she agreed to pay in two or more scheduled payments” after the word “buyer,” which appeared in § 14(B)(8) of the MVSFSA. Paragraph (6) is based on § 14(C) of the MVSFSA. Paragraph (7) is based on § 14(D) of the MVSFSA. Paragraph (8) is based on § 14(E) of the MVSFSA. Paragraph (9) is not contained in the MVSFSA.

Comment

Except as provided in paragraph (5)(i)(D), the purchase price of the motor vehicle may not include charges required to be disclosed under paragraph (5)(v).

§ 4223. Notice.

(a) Requirement.--An installment sale contract shall contain the notice under subsection (b), which shall be printed directly above the space provided for the signature of the buyer.

(b) Form.--

(1) Except as provided in paragraph (2), the notice shall be in the following form:

“NOTICE TO BUYER

Do not sign this contract in blank.

You are entitled to an exact copy of the contract you sign.

Keep it to protect your legal rights.

Any holder of this consumer credit contract is subject to all claims and defenses which the buyer could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the buyer shall not exceed amounts paid by the buyer hereunder.”

(2) In the notice, the words “lessee” or “mortgagor” may be substituted for the word “buyer,” and the words “lease” or “mortgage” may be substituted for the word “contract.”

Note

This section is based on § 13(D) of the MVSFA. This section does not contain the requirement in § 13(D) that the notice be “printed in 12-point type or larger”; that and similar provisions have been relocated to § 4103. The fourth sentence of the notice is based on the notice under 16 C.F.R. § 433.2 (the Federal Holder Rule), with the term “debtor” changed to “buyer.”

§ 4224. Itemization.

Costs and charges under sections 4222 (relating to contents) and 4242 (relating to other costs included in amount financed) shall be separately itemized in an installment sale contract as to their nature and amounts.

Note

This section is based on the first sentence of § 14(B)(10.1) and on § 14(G) of the MVSFA.

§ 4225. Disclosure.

If an installment seller retains a portion of the charge for a good or service, which is provided by another, the seller shall disclose that the seller may retain a portion of the charge.

Note

This section is based on the second sentence of § 14(B)(10.1) of the MVSFA.

§ 4226. Heavy commercial motor vehicle.

(a) Variable finance charge percentage rate.--Notwithstanding any provision of this chapter or other law to the contrary, the finance charge percentage rate included in an installment sale contract for the sale of a heavy commercial motor vehicle may vary during the term of the contract pursuant to a formula or index set forth in the contract that is made readily available to and verifiable by the buyer and beyond the control of the holder of the contract.

(b) Determinations.--Notwithstanding that the finance charge percentage rate may increase or decrease over the term of the contract according to a formula or index set

forth in the contract, the rate applicable to the transaction as of the date of execution of the contract may be used to determine the following:

- (1) The amount of finance charge under section 4222(5)(vii) (relating to contents).
- (2) The time balance under section 4222(5)(viii).
- (3) The payment schedule under section 4222(5)(ix).

Note

This section is based on § 14(B)(10) of the MVSFA.

§ 4227. Manufactured homes.

(a) Optional contract provisions.--An installment sale contract for the sale of a manufactured home may:

(1) require the buyer to pay real estate taxes that may thereafter be levied upon the manufactured home and furnish the installment seller or holder with proof of payment of real estate taxes in the manner that the contract prescribes; and

(2) upon the buyer's failure to pay the real estate taxes or furnish the required proof of payment, allow the seller or holder to accelerate payments or repossess the manufactured home, or both.

(b) Sale.--If the manufactured home is sold by a tax levying unit of government for nonpayment of real estate taxes by the buyer, the following is not affected or divested:

(1) A lien or encumbrance contained in the title of the vehicle pursuant to 75 Pa.C.S. (relating to vehicles).

(2) An encumbrance filed of record against the vehicle under the provisions of 13 Pa.C.S. (relating to uniform commercial code).

Note

This section is based on § 14(F) of the MVSFA.

§ 4228. Prohibited provisions.

An installment sale contract may not contain any of the following:

(1) Blank spaces to be filled in after the contract has been signed, except regarding serial numbers or other identifying marks that are not available for description of the motor vehicle at the time of execution of the contract.

(2) An acceleration clause under which all or part of the time balance represented by payments not yet matured may be declared immediately payable because the installment seller or holder deems itself to be insecure. This provision does not affect an acceleration clause authorizing the seller or holder to declare the entire time balance due and payable in case of any of the following:

(i) The buyer's default in the payment of one or more installment payments.

(ii) The buyer's failure to pay taxes levied against the motor vehicle.

(iii) The buyer's failure to furnish proof of payment of taxes levied against the motor vehicle.

(iv) Use of the motor vehicle for illegal purposes.

(v) The buyer's filing for bankruptcy.

(vi) The buyer's default in the payment of a cross-collateralized obligation.

(vii) The buyer provided intentionally fraudulent and misleading information on a credit application.

(3) A provision authorizing a person acting on behalf of the seller or holder to enter upon the premises of the buyer unlawfully or to commit a breach of the peace in the repossession of the motor vehicle or collateral security.

(4) A provision whereby the buyer waives a right of action against the seller, holder, collector-repossessor or other person acting on behalf of the holder for an illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle or collateral security.

(5) A provision whereby the buyer executes a power of attorney appointing the seller, the holder, a collector-repossessor or the agent of any of them as the buyer's agent in the collection of payments under the contract or in the repossession of the motor vehicle or collateral security. This provision does not apply to a power of attorney issued by the buyer to an attorney-at-law to be used only in the collection of the obligation by legal process.

(6) A provision relieving the holder or other assignee from liability for legal remedies that the buyer may have had against the seller under the contract or a separate instrument executed in connection with the contract.

(7) A provision requiring or entailing the execution of a note or series of notes by the buyer, which when separately negotiated will extinguish as to third parties a right of action or defense that the buyer may have against the original seller.

Note

This section is based on § 15 of the MVSEFA, except that subparagraphs (v) through (vii) of paragraph (2) are not contained in the MVSEFA.

Comment

The taxes referenced in paragraph (2)(ii) and (iii) include sales tax for a motor vehicle and property taxes for a manufactured home.

§ 4229. Transfer.

(a) Installment seller.--An installment seller of a motor vehicle under an installment sale contract executed in the Commonwealth may not sell, transfer or assign the obligation represented by the contract to a person in the Commonwealth or elsewhere unless the person is licensed as a sales finance company under this chapter.

(b) Sales finance company.--A sales finance company licensed under this chapter may not sell, transfer or assign the obligation represented by an installment sale contract executed in the Commonwealth, which it has lawfully acquired, to a person in the Commonwealth or elsewhere unless the person is licensed as a sales finance company under this chapter.

(c) Notice; effect on subsequent holder.--If an installment sale contract is lawfully sold, transferred or assigned to a person who is licensed as a sales finance company under this chapter, the buyer's payment or tender of payment made to, and service of notice on, the last known holder is binding on a subsequent holder until the new holder furnishes to the buyer a written notice of the sale, transfer or assignment that sets forth the name and address of the new holder authorized to receive future payments on the contract.

(d) Default; notice; effect on subsequent holder.--

(1) If an installment sale contract lawfully acquired by a sales finance company is in default, the holder may resell, retransfer or reassign the contract to the installment seller from whom the contract was originally acquired.

(2) The buyer's payment or tender of payment made to, and service of notice on, the last known holder is binding on a subsequent holder until the new holder furnishes to the buyer a written notice of the resale, retransfer or reassignment that sets forth the following:

(i) The name and address of the new holder authorized to receive future payments on the contract.

(ii) The unpaid time balance.

(iii) The accrued late charges due under the contract.

(e) Applicability.--

(1) This section does not apply to an assignment of an aggregation of installment sale contracts:

(i) which is executed by a seller or sales finance company only as a security interest securing payment or performance of a bona fide commercial loan, obtained at lawful rates of interest from a person regularly engaged in the business of lending money on the security of the assigned collateral or amounts due pursuant to a security or debt instrument; and

(ii) under which, in the absence of default or other bona fide breach of the loan contract, the following occurs:

(A) Ownership of the assigned contracts remains vested in the assignor.

(B) Collection of payments on the assigned contracts is made by the assignor.

(2) An assignment of an aggregation of loan contracts under this section may not be for the purpose of evading or circumventing the provisions of this chapter.

Note

Subsections (a), (b) and (c) are based on § 16(A), (B) and (C) of the MVSFSA. Subsection (d) is based on § 16(E) of the MVSFSA. Subsection (e) is based on § 16(D) of the MVSFSA.

§ 4230. Statement of account to buyer.

(a) Information to be included.--At any time after the execution of an installment sale contract and within one year after the termination of the contract, a holder of the contract shall furnish to the buyer upon request a complete and detailed statement of account showing the following:

(1) All amounts paid by the buyer on account of the obligation, dates of payment and the allocation of the payments to the reduction of the following:

- (i) The time balance.
- (ii) Refinance charges.
- (iii) Late charges.
- (iv) Court costs.
- (v) Attorney fees.
- (vi) The costs of retaking, repairing and storing the motor vehicle.
- (vii) Other costs permitted under this chapter and the contract.

(2) All amounts credited to the buyer as rebates for prepayment and unexpired premiums on cancelled insurance.

(3) The amount of the installment payments, accrued charges and expenses incurred, which are due and payable.

(4) The number, amount and due dates of installment payments to become due and payable.

(b) Copies.--

(1) The buyer shall be furnished with one statement of account without charge during the term of the contract or within one year after the termination of the contract.

(2) Upon request and payment of a reasonable fee not to exceed the cost of production, a holder shall furnish to the buyer an additional statement of account.

Note

This section is based on § 28(A) and (B) of the MVSFSA. Although the MVSFSA did not explicitly contain the language in subsection (a)(1)(vii), the concept was implied in § 28(A)(1). Under § 28(B) of the MVSFSA, the holder was required to furnish the buyer with an additional statement upon payment of \$0.50. Subsection (b)(2) replaces that concept with “a reasonable fee not to exceed the cost of production.”

§ 4231. Payment receipts.

(a) When necessary.--When payment is made on an installment sale contract, the person receiving the payment shall, at the time of receiving the payment, furnish a complete written payment receipt to the buyer or individual making the payment on behalf of the buyer if:

- (1) the buyer requests such receipt; or
- (2) payment is made in cash.

(b) Contents.--The payment receipt shall contain the following:

- (1) The date, amount and nature of the payment.
- (2) An identification of the obligation to which the payment is applicable.
- (3) The signature or initials of the person receiving the payment on behalf of the holder.
- (4) The unpaid time balance remaining due after crediting the payment.

(5) The amount attributed to late charges, independent of the payment applied to the reduction of the time balance.

(c) Self-addressed stamped envelope.--The holder may require the buyer to supply a self-addressed stamped envelope as a condition of mailing the receipt if the buyer:

- (1) elects to make a payment by mail; and
- (2) is previously notified of the need for the envelope.

Note

Subsection (a) is based on § 29(A) of the MVSFA. Subsection (b)(1), (2) and (3) is based on § 29(B) of the MVSFA. Subsection (b)(4) and (5) is based on § 29(C) of the MVSFA. Subsection (c) is based on § 29(D) of the MVSFA.

§ 4232. Release of liens.

(a) Duty of holder.--Upon payment in full of the time balance and other amounts lawfully due under an installment sale contract, a holder shall perform the following:

(1) Upon request, return to the buyer all instruments in the form maintained by the holder, except those filed or recorded with a public official and retained in the files of the official, which:

- (i) evidence the buyer's indebtedness or constitute security under the contract; and
- (ii) were signed by the buyer or the buyer's surety or guarantor, in conjunction with the contract.

(2) Specify on the instruments under paragraph (1) that the buyer's obligation has been paid in full.

(3) Release all security interests in the motor vehicle or collateral security for the obligation of the buyer under the contract.

(4) Deliver to the buyer any assignments and documents of title as may be necessary to vest the buyer with complete evidence of title.

(b) Delivery of certificate of title.--The certificate of title for the motor vehicle shall be delivered to the buyer within ten days of the date of tender of payment in full by mail or other arrangements made between the buyer and holder.

Note

This section is based on § 30 of the MVSFA. The phrase “upon request” in subsection (a)(1) is not contained in the MVSFA. The provisions of subsection (a)(2) are not contained in the MVSFA and are added for clarification. Subsection (b) amends the delivery provisions under § 30(B) of the MVSFA by eliminating the “on-the-spot” delivery of the certificate of title and shortening the time frame from 15 to 10 days.

§ 4233. Prohibited charges.

(a) General rule.--Except as provided in subsections (b) and (c), a licensee may directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, insurance charges, other charges necessary or incidental to the sale of the motor vehicle, finance charges, refinance charges, late charges, recording and satisfaction fees, court costs, attorney fees and costs of retaking, repairing and storing a repossessed motor vehicle, which are disclosed as required by section 4222(5) (relating to contents).

(b) Exception.--A licensee may not directly or indirectly charge, contract for, collect or receive from the buyer, in connection with the retail sale of a motor vehicle under an installment sale contract, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines,

penalties or other thing of value in excess of the amounts permitted under subsection (a) or (c).

(c) Manufactured homes.--An installment seller of a manufactured home may charge appraisal fees, brokerage fees and commissions, if they represent actual charges and are properly disclosed to the buyer.

(d) Charges if contract not consummated.--

(1) Subject to paragraph (2), a licensee may not collect a charge in connection with a contemplated sale of a motor vehicle under an installment sale contract if the contract is not consummated.

(2) Paragraph (1) does not affect the legal status of a deposit paid by a prospective buyer to a seller as a binder on the contemplated purchase of a motor vehicle.

(e) Unenforceability.--If an installment sale contract contains a provision that authorizes a prohibited charge, the provision is unenforceable.

Note

Subsections (a) and (b) are based on § 31(A) of the MVSFSA. The MVSFSA did not contain the exception set forth in subsection (c). Subsection (c) is intended to reflect current practice. Subsections (d) and (e) are based on § 31(B) and (C) of the MVSFSA.

§ 4234. Waiver of statutory protection prohibited.

(a) General rule.--A buyer may not validly waive through an action, agreement or statement any provision of this chapter intended to protect a buyer of a motor vehicle.

(b) Choice of law.--A buyer's waiver of the provisions of this chapter, including any purported waiver effected by a contractual choice of the law of another jurisdiction

contained in an installment sale contract, shall be deemed contrary to public policy and is void and unenforceable.

Note

Subsection (a) is based on § 32 of the MVSFA. Subsection (b) is not contained in the MVSFA.

§ 4235. Effect of license expiration, surrender and revocation on contracts.

(a) Effect.--The expiration, surrender or revocation of a license issued under this chapter to an installment seller or sales finance company does not impair or affect the obligation under an installment sale contract entered into lawfully or lawfully acquired by the licensee prior to the effective date of the expiration, surrender or revocation of the license.

(b) Charges by holder prohibited.--A holder of an installment sale contract forfeits the right to charge, contract for, receive or collect refinance charges authorized by this chapter for renewal of the contract, if the holder's license has expired, was surrendered or was revoked prior to the date of the renewal.

(c) Sale, transfer and assignment of contracts.--A licensee whose license has expired, was surrendered or was revoked may sell, transfer or assign contracts entered into or acquired prior to the expiration, surrender or revocation to a licensed sales finance company, which may renew the contracts in accordance with the provisions of this chapter.

(d) Prohibitions regarding contracts.--A licensee whose license has expired, was surrendered or was revoked may not:

- (1) enter into new contracts for the retail sale of motor vehicles under installment sale contracts; or

(2) discount, purchase or otherwise acquire the new contracts.

Note

**Subsections (a) and (b) are based on § 34(A) of the MVSFA.
Subsections (c) and (d) are based on § 34(B) and (C) of the MVSFA.**

§ 4236. Enforcement.

(a) When obligation unenforceable.--An obligation of the buyer of a motor vehicle under an installment sale contract that was consummated in the Commonwealth is not enforceable in the Commonwealth if:

(1) the installment seller was not licensed under this chapter when the seller entered into the contract; or

(2) the holder was not licensed under this chapter when the holder acquired the contract.

(b) Cancellation of contract; release of liens.--Upon payment or tender of payment to the holder of the principal amount financed under the contract described in subsection (a), less payments on account of the obligation exclusive of down payment which had been made previously, the buyer under the contract is entitled to:

(1) cancellation of the contract; and

(2) release of all liens against:

(i) the motor vehicle sold under the contract; and

(ii) collateral security owned by the buyer or the buyer's surety or guarantor.

(c) Applicability.--This section may not be construed to prevent the enforcement in the Commonwealth of an obligation arising from the sale of a motor vehicle made outside the Commonwealth under an installment sale contract entered into or executed by the

buyer outside the Commonwealth, whether or not the buyer was a resident of the Commonwealth at the time the buyer entered into the contract.

Note

Subsection (a) is based on the first sentence of § 35(A) of the MVSFSA. Subsection (b) is based on the second sentence of § 35(A) of the MVSFSA. Subsection (c) is based on § 35(B) of the MVSFSA.

SUBCHAPTER D
COSTS AND CHARGES

Sec.

- 4241. Insurance.
- 4242. Other costs included in amount financed.
- 4243. Finance charges.
- 4244. Refinance charges.
- 4245. Late charges.
- 4246. Refund for prepayment of contract.

§ 4241. Insurance.

(a) General rule.--

(1) The insurance purchased under this section shall be:

(i) limited to insurance against risk of damage, destruction or theft of the motor vehicle;

(ii) written for the dual protection of the buyer and installment seller or holder, to the extent of their respective interests in the motor vehicle; and

(iii) subject to terms and conditions, including the amount and period of time, that are reasonable and appropriate considering the type and condition of the motor vehicle, the amount of the time balance and the schedule of payments in the installment sale contract.

(2) The provisions of paragraph (1) may not interfere with the following:

(i) The liberty of contract of the buyer and seller to contract for other or additional insurance as security for, or by reason of the obligation of, the buyer.

(ii) The inclusion of charges for insurance in the principal amount advanced under the installment sale contract.

(b) Purchase by buyer.--

(1) An installment seller may require a buyer of a motor vehicle under an installment sale contract to purchase insurance on the motor vehicle at the buyer's expense from an insurance company acceptable to the seller.

(2) The buyer may select the insurance company agent or broker, in which case the inclusion of insurance charges in the contract shall be optional with the seller.

(c) Purchase by seller generally.--If an installment seller or a holder contracts to purchase at the buyer's expense insurance on a motor vehicle sold under an installment sale contract, the following apply:

(1) The insurance shall be purchased through an agent or broker authorized to conduct business in the Commonwealth.

(2) The insurance shall be written by an insurance company qualified to do business in the Commonwealth.

(3) The status of the buyer and seller or holder, as set forth in the insurance contract, shall reflect their respective interests in the motor vehicle.

(4) The insurance charges to the buyer may not exceed the following:

(i) The insurance charges that others are required to pay to the insurance company for similar coverage.

- (ii) The limitations on premiums, commissions and other charges established by the Commonwealth.
- (5) A copy of the policy or certificate of insurance shall be delivered to the buyer within 30 days of the date of the buyer's signing of the contract.
- (6) The insurance policy shall contain the following:
 - (i) Complete information as to the effective dates, amounts of premiums and coverage.
 - (ii) All the terms of the insurance contract.
- (7) If a certificate of insurance issued under a master policy is furnished to the buyer in lieu of an individual policy, the certificate shall contain the following:
 - (i) Complete information as to effective dates, amounts of premiums and coverage.
 - (ii) All the terms of the insurance contract embodied in the master policy to the same extent as would appear if an individual policy were issued.
 - (iii) Notice that it is not an insurance policy.
- (d) Early termination of policy.--
 - (1) This subsection applies if an installment seller or a holder has placed insurance at the buyer's expense on a motor vehicle sold under an installment sale contract.
 - (2) If the buyer prepays the time balance under the contract prior to the expiration date of the insurance:
 - (i) the insurance shall remain in force unless the buyer requests cancellation of the insurance;

(ii) the seller or holder may not cancel the insurance without the buyer's consent;

(iii) the seller or holder may not coerce the buyer to cancel the insurance; and

(iv) unexpired insurance premiums received by the seller or holder, resulting from cancellation of insurance originally placed at the buyer's expense, shall be paid to the buyer or credited to matured unpaid installments under the contract.

(3) If the insurance company cancels the insurance prior to expiration, the seller or subsequent holder shall:

(i) obtain comparable insurance from another insurance company and furnish the buyer with a copy of the insurance policy, subject to the same requirements of this chapter applicable to the original policy; or

(ii) if unable to obtain comparable insurance from another insurance company, immediately notify the buyer, who may then obtain insurance from an insurance company, agent or broker of the buyer's own selection, in which case the seller or holder shall be liable to the buyer for the following:

(A) Additional insurance charges incurred by the buyer in rewriting the insurance for the unexpired period for which the original insurance was written.

(B) A loss suffered by the buyer through negligence on the part of the seller or holder in promptly advising the buyer of the inability to obtain replacement insurance.

Note

Subsection (a) is based on the second, third and fourth sentences of § 17(A) of the MVSFA. Subsection (b) is based on the first sentence

of § 17(A) of the MVSFA and § 17(B) of the MVSFA. Subsection (c)(1) through (4) is based on § 17(C) of the MVSFA. Subsection (c)(5) is based on § 17(D) of the MVSFA. Subsection (c)(6) and (7) is based on § 17(E) of the MVSFA. Subsection (d) is based on § 17(F) and (G) of the MVSFA.

§ 4242. Other costs included in amount financed.

(a) Costs payable by buyer.--An installment seller of a motor vehicle under an installment sale contract may require a buyer to pay the following other costs incurred in the sale of a motor vehicle under the contract:

(1) Fees payable to the Commonwealth for filing a lien or encumbrance on the certificate of title to a motor vehicle sold under the contract or collateral security for the motor vehicle.

(2) Fees payable to a public official for filing, recording, satisfying or releasing the contract or instruments securing the buyer's obligation.

(3) Fees for notarization required in connection with the filing, recording, satisfying or releasing a mortgage, judgment lien or encumbrance.

(b) Costs for which buyer voluntarily contracts.--The seller of a motor vehicle under the contract may contract with the buyer to pay on behalf of the buyer the following other incidental costs relating to the sale of the motor vehicle, for which the buyer has voluntarily contracted:

(1) Fees payable to the Commonwealth for registration of the motor vehicle and issuance or transfer of registration plates.

(2) Fees payable to the Commonwealth for the buyer's driver's license.

(3) Costs of messenger service and other costs associated with the submission of documents to the Commonwealth or other governmental entity.

(c) Collection and credit for fees and costs.--With respect to the costs under subsections (a) and (b), the seller may:

(1) contract for, collect or receive them from the buyer independently of the contract; or

(2) extend credit to the buyer for them and include them in the principal amount financed under the contract.

(d) Amount of costs.--Unless otherwise permitted by the laws of the Commonwealth, the costs under subsections (a) and (b) that are paid or payable by the buyer may not exceed the amount that the seller expends or intends to expend for them.

(e) Costs not disbursed.--Costs that were collected from the buyer or included in the buyer's obligation under the installment sale contract but were not disbursed by the seller as contemplated shall be immediately refunded or credited to the buyer.

(f) Incidental charges.--

(1) Subject to paragraph (2), the seller of a motor vehicle under the contract may contract with the buyer to pay on behalf of the buyer other charges necessary or incidental to the sale of a motor vehicle and contracted for by the buyer, if the charges are not:

(i) in violation of section 4218(a)(12) (relating to revocation or suspension of license); or

(ii) restricted under this chapter or any other statute.

(2) Only the costs of necessary repairs disclosed at the time of the installment sale may be included in the contract. Necessary repairs arising after the execution of the contract may not be added to the original contract.

(3) This subsection does not otherwise authorize the mark-up of costs under subsection (a) or (b).

Note

Subsections (a), (b) and (c) are based on § 18(A), (B) and (C) of the MVSFA. Subsection (d) is based on the first sentence of § 18(D) of the MVSFA. Subsection (e) is based on the second sentence of § 18(D) of the MVSFA. Subsection (f)(1) and (3) is based on § 18(E) of the MVSFA. Subsection (f)(2) is not contained in the MVSFA.

Comment

Subsections (b) and (d) include fees and costs permitted by the Department of Transportation. Subsection (f)(2) is intended to prevent an installment seller from rolling repair costs arising after the execution of the installment sale contract into the original contract, whereby if the buyer defaults on paying the repair costs, the seller may repossess the motor vehicle. If the buyer needs to finance the repair costs, a separate loan document must be executed.

§ 4243. Finance charges.

(a) General rule.--An installment seller licensed under this chapter shall have the power and authority to charge, contract for, receive or collect a finance charge under this chapter on an installment sale contract covering the retail sale of a motor vehicle in the Commonwealth.

(b) Method of computation.--

(1) An installment seller may compute a finance charge authorized by this section by any method if the charge does not exceed the applicable maximum percentage under subsections (d) and (e).

(2) A finance charge under this section shall be computed:

(i) on the principal amount financed as determined under section 4222(5)(vi) (relating to contents);

- (ii) at the annual rate indicated on a one-year installment sale contract; and
- (iii) proportionately on an installment sale contract that extends for a period that is less than or greater than one year.

(3) A finance charge under this section may be computed on the basis of a full month for a fractional month period in excess of ten days, and interest may continue to be charged during a period of time for which a late charge is also imposed.

(c) Manufactured homes.--If the installment sale contract involves a manufactured home, whether or not the sale on credit or loan is insured or guaranteed in whole or in part by the Federal Housing Administration, pursuant to the National Housing Act of June 27, 1934 (48 Stat. 1246), the percentage established as a maximum finance charge for a manufactured home by regulation of the Federal Housing Administration shall govern.

(d) New motor vehicles--.

(1) Except as otherwise provided in this section, a finance charge for a new motor vehicle may not exceed the equivalent of 18% simple interest per year on the unpaid balance.

(2) Except as provided in paragraph (3), a finance charge for a new motor vehicle having a purchase price of \$10,000 or more and used primarily for a commercial purpose may not exceed the equivalent of 7½% per year.

(3) A finance charge may not exceed the equivalent of 10% per year for the following:

- (i) A new truck and truck tractor having a manufacturer's gross vehicular weight of 13,000 pounds or more.

- (ii) A new semitrailer and trailer designed for use in combination with a truck tractor.
- (e) Used motor vehicles.--
- (1) A finance charge for a used motor vehicle, of a model designated by the manufacturer by a year not more than two years prior to the year in which the sale is made, may not exceed the equivalent of 18% simple interest per year on the unpaid balance.
- (2) A finance charge for an older used motor vehicle, of a model designated by the manufacturer by a year more than two years prior to the year in which the sale is made, may not exceed the equivalent of 21% simple interest per year on the unpaid balance.
- (f) Federally-insured loans.--Subject to subsection (c), if a sale on credit or loan is insured or guaranteed in whole or in part by the Veterans' Administration or another department or agency of the United States Government, the laws or regulations that govern the Federal department or agency regarding the maximum finance charge and rate of interest for the sale shall govern.

Note

Subsections (a), (c), (d) and (e) are based on § 19(A) of the MVSFA. Subsection (b)(1) is not contained in the MVSFA but codifies existing practice, as permitted by the Department of Banking. Subsection (b)(2) is based on § 19(B) and (C) of the MVSFA. Subsection (b)(3) is based on § 19(D) of the MVSFA. Subsection (f) is based on § 19(F) of the MVSFA. This chapter does not contain the provision under § 19(E) of the MVSFA regarding a minimum finance charge.

Comment

Subsection (d)(1) does not apply to the following: (1) a vehicle having a purchase price of \$10,000 or more and used primarily for a commercial purpose; (2) a manufactured home; (3) a new truck or truck tractor having a manufacturer's gross vehicular weight of 13,000 pounds or more; and (4) a new semitrailer or trailer designed for use in combination with a truck tractor.

§ 4244. Refinance charges.

(a) General rule.--

(1) A holder of an installment sale contract may:

(i) extend the scheduled due date or defer the scheduled payment of all or part of an unpaid installment payment;

(ii) renew the unpaid time balance of the contract; or

(iii) contract for, receive and collect a refinance charge for an extension, deferment or renewal under subparagraphs (i) and (ii).

(2) A refinance charge for a motor vehicle under section 4243(d) and (e) (relating to finance charges) may not exceed the amount determined under this section.

(b) Rates; computation.--

(1) For a motor vehicle under section 4243(d)(1) and (e), the refinance charge shall be determined by either of the following:

(i) Subject to subsection (c), the refinance charge on the amount of a refinanced full or partial installment payment, for which each full or partial payment is extended or deferred, may not exceed the equivalent of the following rates:

(A) 1% per month for a vehicle under section 4243(d)(1).

(B) 1½% per month for a vehicle under section 4243(e)(1).

(C) 2% per month for a vehicle under section 4243(e)(2).

(ii) Subject to subsection (d), the refinance charge on the amount obtained shall be determined by:

(A) adding the unpaid time balance of the contract, insurance charges, other charges incidental to refinancing, unpaid late charges that may be accrued; and

(B) deducting a rebate that may be due to the buyer for prepayment incidental to refinancing, at the rate of the finance charge in the original contract, for the term of the renewal contract and subject to the provisions of this chapter governing computation of the original finance charge.

(2) For a motor vehicle under section 4243(d)(2) and (3), the refinance charge shall be determined by the method of computation under paragraph (1)(ii) of this subsection.

(3) For a manufactured home under section 4243(c), the refinance charge shall be determined by regulation of the Federal Housing Administration, pursuant to the National Housing Act of June 27, 1934 (48 Stat. 1246).

(4) Subject to paragraph (3), if the refinancing of a motor vehicle is insured or guaranteed in whole or in part by the Veterans' Administration or another department or agency of the United States Government, the laws or regulations that govern the Federal department or agency regarding the maximum refinance charge and rate of interest for the refinancing shall govern.

(c) Fractional month.--A computed refinance charge under subsection (b)(1) may be computed on the basis of a full month for any fractional month period in excess of ten days.

(d) Other provisions not applicable to computation.--The provisions of this chapter governing minimum prepayment rebate do not apply in calculating refinance charges on the contract renewed under subsection (b)(2).

(e) Prohibited contents.--Except as provided in subsection (f) and subject to subsection (g), the holder of an installment sale contract may not include in a refinancing contract a cash loan to the buyer or credit extended to the buyer incidental to the purchase of goods or services.

(f) Permissible contents.--A holder under subsection (e) may include the following in the refinance contract:

(1) Charges for accessories, equipment and parts for the motor vehicle sold under the contract.

(2) Charges for repairs and services to the motor vehicle.

(3) Finance charges.

(g) Loan.--

(1) A loan under subsection (e) does not include, and this chapter does not prohibit, a rearrangement of payments under the installment sale contract by a refinance transaction involving a restoration of certain installment payments made under the contract.

(2) A refinance charge on an amount restored pursuant to paragraph (1) may not exceed the equivalent of 6% simple interest per year.

Note

Subsection (a)(1)(i) and (ii) is based on § 20(A) of the MVSFA. Subsection (a)(1)(iii) and (2) is based on § 20(B) of the MVSFA. Subsection (b)(1) and (2) is based on § 20(B) of the MVSFA. Subsection (b)(3) and (4) is not contained in the MVSFA. Subsections (c) and (d) are based on § 20(B) of the MVSFA. This section does not contain the reference under § 20(B) of the MVSFA regarding minimum finance charges. Subsections (e), (f) and (g) are based on § 20(C) of the MVSFA.

§ 4245. Late charges.

(a) General rule.--A late charge may be collected on the following:

(1) An installment payment that is not paid on or before the due date of the payment.

(2) A contract subject to this chapter, regardless of the classification of vehicle under section 4243 (relating to finance charges) or the method by which the finance charge is computed.

(b) Rate; computation.--

(1) Under a contract for the sale of a motor vehicle other than a heavy commercial motor vehicle, a late charge may not, for any payment not made within ten days of its scheduled due date, exceed the rate of 2% on the amount of the payment in arrears.

(2) Under a contract for the sale of a heavy commercial motor vehicle, a late charge may not, for any payment not made within ten days of its scheduled due date, exceed the rate of 4% of the amount of the payment in arrears.

(3) The late charges under paragraphs (1) and (2) may be collected only once on each payment in arrears.

(c) Collection.--

(1) Late charges may be:

- (i) collected when earned, during the term of the contract; or
- (ii) accumulated and collected at final maturity or at the time of final payment under the contract.

(2) A late charge may not be collected on a payment in default because of an acceleration provision in the contract.

Note

This section is based on § 21 of the MVSFA. Subsection (b)(1) does not contain the following, which were contained in § 21: the words “per month” after “2%” and the sentence “Such default charge may be computed on the basis of a full calendar month for any fractional month period in excess of ten (10) days.” Unlike § 21, subsection (b)(1) contains the phrase “for any payment not made within ten days of its scheduled due date.”

§ 4246. Refund for prepayment of contract.

(a) Right to prepay unpaid time balance.--Notwithstanding the provisions of an installment sale contract, a buyer may prepay at any time all or part of the unpaid time balance under the contract.

(b) Rebate generally.--If the entire time balance is liquidated prior to maturity by prepayment, refinancing or termination by surrender or repossession and resale of the motor vehicle, a holder of the contract shall immediately rebate to the buyer any unearned portion of the finance charge. The rebate may be made in cash or credited to the amount due on the obligation of the buyer.

(c) Rebate amount.--

(1) Subject to paragraph (2), the proportion of the unearned finance charge to be rebated to the buyer to the total finance charge shall be at least the proportion of the sum of the periodic time balances after the date of prepayment to the sum of all the periodic time balances under the schedule of payments in the original agreement.

(2) The holder is not required to rebate:

(i) a portion of the unearned finance charge that results in a net minimum finance charge on the contract of less than \$10.00; or

(ii) an unearned finance charge if the computed amount due is less than \$1.00.

Note

This section is based on § 22 of the MVSFA.

SUBCHAPTER E
REPOSSESSION

Sec.

- 4251. Repossession authorized.
- 4252. Who may repossess.
- 4253. Legal proceedings.
- 4254. Notice of repossession.
- 4255. Personal property in repossessed motor vehicle.
- 4256. Buyer's liability for costs.
- 4257. Notice to police.
- 4258. Reinstatement of contract after repossession.
- 4259. Redemption and termination of contract after repossession.
- 4260. Sale of motor vehicle after repossession.
- 4261. Deficiency judgment.
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§ 4251. Repossession authorized.

(a) When repossession may occur.--An installment seller or a holder, who has lawfully acquired a motor vehicle installment sale contract, may retake possession of the motor vehicle if the buyer:

- (1) is in default in the payment of an amount due under the contract; or
- (2) has committed another breach of contract, which is by the contract specifically made a ground for retaking the motor vehicle.

(b) Legal process.--

(1) Unless the motor vehicle can be retaken without breach of the peace, it shall be retaken by legal process.

(2) This subchapter may not be construed to authorize a violation of the criminal law.

(c) Limitation.--Except as provided in this chapter, in a transaction involving a commercial purpose, the provisions of this chapter regarding repossession of a motor vehicle are limited by the provisions of 13 Pa.C.S. Div. 9 (relating to secured transactions).

Note

Subsection (a) is based on the first sentence of § 23(A) of the MVSFSA. Subsection (b) is based on the second sentence of § 23(A) of the MVSFSA. Subsection (c) is not contained in the MVSFSA.

§ 4252. Who may repossess.

(a) With legal process.--Repossession of a motor vehicle when effected by legal process shall be made only by a duly constituted public official.

(b) Without legal process.--Repossession of a motor vehicle when effected otherwise than by legal process shall be made only by the following:

- (1) The holder.
- (2) An official or full-time employee of the holder.
- (3) A collector-repossessor licensed under this chapter.
- (4) The person who originally sold the motor vehicle to the buyer under the installment sale contract.
- (5) A licensed seller or sales finance company who is not regularly engaged in the business of repossessing motor vehicles but occasionally does so as an accommodation for another seller or sales finance company.
- (6) An official or full-time employee of a licensed seller or sales finance company under paragraph (5).

Note

Subsection (a) is based on the first sentence of § 23(B) of the MVSEFA. Subsection (b) is based on the second sentence of § 23(B) of the MVSEFA.

§ 4253. Legal proceedings.

(a) When to commence action.--If repossession and sale of the motor vehicle sold under an installment sale contract or its collateral security is effected by legal process, the holder may commence legal proceedings immediately upon the buyer's default or breach of contract.

(b) Rights and duties of buyer.--In a proceeding under subsection (a), the buyer shall receive notice, have the rights, and be liable for the costs of suit and reasonable attorney fees as provided by the laws of the Commonwealth governing legal proceedings.

Note

Subsection (a) is based on the first sentence of § 23(C) of the MVSFSA. Subsection (b) is based on the second sentence of § 23(C) of the MVSFSA.

§ 4254. Notice of repossession.

(a) General rule.--If repossession of a motor vehicle that is the subject of an installment sale contract is effected other than by legal process, the holder shall immediately furnish the buyer with a written notice of repossession.

(b) Delivery.--The notice of repossession shall be delivered in person or sent by registered or certified mail to the last known address of the buyer.

(c) Contents.--The notice of repossession shall contain the following:

(1) The buyer's right as to reinstatement of the contract, if the holder extends the privilege of reinstatement and redemption of the motor vehicle.

(2) An itemized statement of the total amount required to redeem the motor vehicle by reinstatement or payment of the contract in full.

(3) Notice to the buyer of the holder's intent to resell the motor vehicle at the expiration of 15 days from the date of mailing the notice.

(4) The place where the motor vehicle is stored.

(5) The name and address of the person to whom the buyer shall make payment or upon whom the buyer may serve notice.

(6) A statement that any personal property left in the repossessed vehicle will be held for 30 days from the date of the mailing of the notice.

(7) The name and address of the person that the buyer may contact to receive a full statement of account as provided by 12 Pa.C.S. section 4230 (relating to statement of account to buyer).

Note

Subsections (a) and (b) are based on the first sentence of § 23(D) of the MVSFA. Subsection (c)(1) through (5) is based on the second sentence of § 23(D) of the MVSFA. Subsection (c)(6) is based on the third sentence of § 23(D) of the MVSFA. Subsection (c)(7) is not contained in the MVSFA.

§ 4255. Personal property in repossessed motor vehicle.

A buyer may reclaim personal property left in the repossessed motor vehicle within 30 days of the mailing of the notice under section 4254 (relating to notice of repossession).

Note

This section is based on the fourth sentence of § 23(D) of the MVSFA.

Comment

If personal property is left in the motor vehicle after the 30-day time period, the holder may dispose of the personal property in any manner that it chooses.

§ 4256. Buyer's liability for costs.

If repossession of a motor vehicle that is the subject of an installment sale contract is effected other than by legal process, the buyer shall be liable for costs incurred by the holder in retaking, storing and repairing the motor vehicle only if:

- (1) the default exceeds 15 days at the time of repossession;
- (2) the costs are actual, necessary and reasonable, excluding repossession costs for services by an individual who is a regular full-time employee of the holder;

(3) the costs are supported by receipts or other satisfactory evidence of payment;
and

(4) the records of the holder show detailed information as to the nature and amount of each cost, the date of payment and the recipient of the payment.

Note

This section is based on § 23(E) of the MVSFA.

Comment

The Department of Banking has the authority to reduce improperly assessed costs under § 4203(a)(6).

§ 4257. Notice to police.

The reposessor of a motor vehicle shall give notice within 24 hours after the repossession to:

(1) the local municipal police department having jurisdiction of the area where the vehicle was located at the time of repossession; or

(2) the Pennsylvania State Police, if no municipal police jurisdiction exists.

Note

This section is based on § 23(H) of the MVSFA.

§ 4258. Reinstatement of contract after repossession.

(a) When reinstatement may occur.--If a motor vehicle sold under an installment sale contract has been repossessed by legal process or otherwise, because of default or other breach of contract, the holder may reinstate the contract and return the motor vehicle to the buyer if the buyer:

(1) pays all past due installments; or

(2) makes mutually satisfactory arrangements with the holder regarding the following:

(i) Accrued late charges.

(ii) Costs of suit under the contract and authorized by this chapter in repossession by legal process.

(iii) The costs of retaking, repairing and storing under section 4256 (relating to buyer's liability for costs), if default at the time of repossession exceeds 15 days.

(b) Refinancing.--If a contract is reinstated after repossession, the holder may contemporaneously or subsequently enter into a contract with the buyer for refinancing the obligation as provided in this chapter.

Note

This section is based on § 24 of the MVSFA.

§ 4259. Redemption and termination of contract after repossession.

(a) Retaining motor vehicle.--Unless the right of redemption is waived in a non-consumer transaction under 13 Pa.C.S. section 9624(c) (relating to waiver), if repossession of a motor vehicle that is the subject of an installment sale contract is effected within or outside the Commonwealth other than by legal process, the holder shall retain the repossessed motor vehicle for a period of 15 days after the mailing of the notice of repossession under section 4254 (relating to notice of repossession).

(b) Redemption.--During the 15-day period after the mailing of the notice of repossession, the buyer may redeem the motor vehicle and terminate the contract by payment or tender of payment to the holder of the following amounts:

(1) If default at the time of repossession is 15 days or less, the sum of the following, less rebate of any unearned finance charge and excluding the costs of retaking, repairing and storing under section 4256 (relating to buyer's liability for costs):

- (i) The unpaid time balance.
- (ii) Accrued late charges authorized by this chapter.
- (iii) Any other amount lawfully due under the contract.

(2) If default at the time of repossession exceeds 15 days, the sum of the following, less rebate of any unearned finance charge:

- (i) The unpaid time balance.
- (ii) Accrued late charges authorized by this chapter.
- (iii) The costs of retaking, repairing and storing under section 4256.
- (iv) Any other amount lawfully due under the contract.

(c) Return of motor vehicle and collateral.--

(1) If the buyer redeems the motor vehicle and terminates the contract by payment or tender as provided in subsection (b), the holder shall return the motor vehicle and other collateral in a manner consistent with 13 Pa.C.S. section 9623 (relating to right to redeem collateral).

(2) Property is deemed to be returned in a manner in compliance with this chapter and 13 Pa.C.S. section 9623 by delivery to one of the following sites designated by the buyer:

- (i) The county in the Commonwealth or within a comparable governmental unit outside the Commonwealth where repossession occurred.

(ii) A county in the Commonwealth where the buyer resides.

(iii) The county in the Commonwealth where the vehicle was purchased under the contract.

(3) Upon receipt of the funds necessary to redeem the motor vehicle as provided in subsection (b), the holder shall return the repossessed motor vehicle as soon as is reasonably possible, but not later than ten business days from the receipt of the funds.

Note

Subsections (a) and (b) are based on § 25(A) and (B) of the MVSFA. Subsection (c)(1) is based on the first sentence of § 25(C). Subsection (c)(2) is based on the second sentence of § 25(C). Subsection (c)(3) is based on § 25(D) of the MVSFA.

§ 4260. Sale of motor vehicle after repossession.

(a) Forfeiture.--If the repossessed motor vehicle under an installment sale contract is not redeemed by the buyer either by termination or reinstatement of the contract within the 15-day notice of redemption period, the buyer forfeits all claim to the motor vehicle and collateral security.

(b) Deficiency.--If the buyer does not redeem the repossessed motor vehicle within the 15-day notice of redemption period, the seller or holder does not have the right to bring an action or proceeding against the buyer for a deficiency under section 4261 (relating to deficiency judgment), unless there has been a public or private sale of the repossessed motor vehicle and collateral security.

(c) Motor vehicle title.--Upon the sale of a repossessed motor vehicle to a purchaser, a seller or holder shall provide to the purchaser the title to the vehicle and all necessary documents to effect the transfer of the vehicle.

Note

Subsections (a) and (b) are based on § 26 of the MVSFA. Subsection (c) is not contained in the MVSFA.

Comment

Subsection (c) is intended to ensure that the seller or holder provides the necessary documentation for the purchaser of a repossessed motor vehicle to become the titled owner of the vehicle. In the case of a repossessed manufactured home, the seller or holder would also need to disclose any liens on the manufactured home and any back taxes or other fees owed.

§ 4261. Deficiency judgment.

(a) General rule.--If the proceeds of the resale under section 4260 (relating to sale of motor vehicle after repossession) are not sufficient to defray the expenses regarding the repossessed motor vehicle, including the costs under section 4256 (relating to buyer's liability for costs), the net balance due on the installment sale contract and the amount of accrued late charges authorized by this chapter, the seller or holder may recover the deficiency from the buyer or from any person who has succeeded to the obligations of the buyer.

(b) Reasonable value.--

(1) The reasonable value of the motor vehicle at the time of resale shall be determined in an action or a proceeding brought by:

(i) the seller or holder to recover the deficiency; or

(ii) the buyer.

(2) The resale price of the motor vehicle is prima facie, but not conclusive, evidence of the reasonable value of the motor vehicle.

(3) The determined reasonable value or the resale price of the motor vehicle, whichever is higher, shall be credited against buyer's indebtedness.

(c) Reasonable costs.--In an action or a proceeding for a deficiency, the buyer may have the reasonableness of the costs incurred determined under section 4256.

(d) Deficiency notice.--Within 30 days after the sale of the repossessed motor vehicle, the seller or holder shall deliver in person or send by registered or certified mail to the last known address of the buyer a deficiency notice containing the following:

(1) The sale price of the repossessed motor vehicle.

(2) The itemized costs associated with the repossession and sale of the repossessed motor vehicle.

(3) The amount of the deficiency owed by the buyer.

(e) Applicability.--Subsections (b)(1)(ii) and (d) do not apply to a deficiency on a resale that was held prior to the effective date of this section.

Note

Subsections (a) and (b) are based on the first sentence of § 27 of the MVSFA. Unlike the MVSFA, the buyer may bring an action or a proceeding to determine the reasonable value of the motor vehicle at the time of resale. Subsection (c) is based on the second sentence of § 27 of the MVSFA. Subsection (d) is not contained in the MVSFA. Subsection (e) is based conceptually on the last sentence of § 27 of the MVSFA.

Comment

Subsection (b)(1)(ii) changes former law by allowing a buyer to bring an action or a proceeding to determine the reasonable value of the motor vehicle at the time of resale. The provision is intended to apply in cases involving an overage, where the value of the repossessed motor vehicle exceeds the amount owed on it. For example, under former law, if Buyer-1 owed \$10,000 on the repossessed motor vehicle and the holder subsequently sold the vehicle for \$12,000 to Buyer-2 who traded in a motor vehicle, Buyer-1

would have no legal recourse to collect the \$2,000 overage from the holder.

§ 4262. Procedures for manufactured homes.

(a) Notice.--

(1) A holder shall give a buyer of a manufactured home notice under this subsection before the holder takes any of the following actions:

(i) Accelerates the maturity of the installment sale contract for the manufactured home.

(ii) Commences a legal action to recover under the contract.

(iii) Takes possession of any collateral of the buyer for the obligation.

(2) Notice of the intention to take an action under paragraph (1) shall be in writing and:

(i) sent to the buyer at least 30 days in advance of the action by registered or certified mail at the address where the manufactured home is located; and

(ii) clearly and conspicuously state the following:

(A) The particular obligation or security interest.

(B) The nature of the default claimed.

(C) The right of the buyer to cure the default as provided in this section and exactly what performance, including the sum of money, that must be tendered to cure the default.

(D) That the buyer may cure the default at any time before title to the manufactured home is lawfully transferred from the buyer, which shall be at least 45 days after receipt of the notice.

(E) The method by which the buyer's ownership or possession of the manufactured home may be terminated.

(3) Notice under this subsection is not required if the buyer has abandoned or voluntarily surrendered the property that is the subject of the contract.

(b) Cure of default.--

(1) Notwithstanding any other provision of law, the buyer of a manufactured home under an installment sale contract, or another person on the buyer's behalf, may cure the buyer's default and prevent the sale or other disposition of the manufactured home and avoid acceleration:

(i) after the notice under subsection (a) has been given;

(ii) at any time before title to the manufactured home is lawfully transferred from the buyer, which shall be at least 45 days after the buyer's receipt of the notice;

(iii) not more than three times in a calendar year; and

(iv) by tendering the amount or performance specified in this section.

(2) To cure a default under this subsection, the buyer shall take the following actions:

(i) Pay by cash, cashier's check or certified check, all sums which would have been due at the time of payment, in the absence of default or exercise of an acceleration clause.

(ii) Perform any other obligation which the buyer would have been bound to perform, in the absence of default or exercise of an acceleration clause.

(iii) Pay reasonable fees allowed under subsection (d) and reasonable costs of proceeding to commence legal action as specified in writing by the holder and actually incurred to the date of payment.

(iv) Pay a reasonable late penalty, if provided for in the contract.

(v) Pay the costs that are reasonable and actually incurred by the holder for detaching and transporting the manufactured home to the site of the sale.

(3) Cure of a default under this subsection restores the buyer to the same position as if the default had not occurred.

(c) Prepayment.--An obligation under an installment sale contract for a manufactured home may be prepaid without penalty or other charge for prepayment at any time before the end of the period of the loan.

(d) Attorney fees.--A holder of an installment sale contract for a manufactured home may not contract for or receive attorney fees from the buyer except as follows:

(1) Upon commencement of legal action regarding the contract, attorney fees that are reasonable and actually incurred by the holder may be charged to the buyer.

(2) Prior to commencement of legal action regarding the contract, attorney fees may be charged if they are:

(i) reasonable and actually incurred;

(ii) not in excess of \$150; and

(iii) incurred after the 30-day notice period under subsection (a).

(e) Waiver prohibited.--Notwithstanding any other provision of law, a person may not waive the provisions of this section by an oral or written agreement.

Note

Subsection (a) is based on § 23(G)(1) and (2) of the MVSFA. Subsection (b)(1) and (2) is based on § 23(G)(3) of the MVSFA. Subsection (b)(3) is based on § 23(G)(4) of the MVSFA. Subsections (c), (d) and (e) are based on § 23(G)(5), (6) and (7) of the MVSFA. The dollar amount under § 23(G)(6)(b) of the MVSFA was \$50; subsection (d)(2)(ii) raises the amount to \$150.

SUBCHAPTER F PENALTIES AND LIABILITY

Sec.

- 4271. Operating without license.
- 4272. Violation of chapter provisions.
- 4273. Use of unlicensed collector-repossessor.
- 4274. Civil penalty by department.
- 4275. Liability of sales finance company.

§ 4271. Operating without license.

(a) Prohibition; penalty.--An entity or individual under subsection (b) engaging in business in the Commonwealth as an installment seller, sales finance company or collector-repossessor without having obtained a license under this chapter is guilty of a violation of this chapter and upon conviction shall be sentenced at the discretion of the court to either or both of the following:

- (1) Pay a fine of not less than \$2,000 nor more than \$10,000.
- (2) Imprisonment of not more than three years.

(b) Applicability.--Subsection (a) applies to the following:

- (1) A person, partnership, association, business corporation, financial institution, nonprofit corporation, common law trust, joint stock company or any other group of individuals, however organized.

(2) An owner, partner, member, officer, director, trustee, employee, agent, broker or representative of an entity under paragraph (1).

Note

This section is based on § 37(A) of the MVSFA.

§ 4272. Violation of chapter provisions.

A licensee or an owner, partner, member, officer, director, trustee, employee, agent, broker or representative of the licensee who violates a provision of this chapter or directs a violation of this chapter shall be guilty of a violation of this chapter and upon conviction shall be sentenced at the discretion of the court to the following:

- (1) Pay a fine of not more than \$2,000 for the first offense.
- (2) For each subsequent offense, to either or both of the following:
 - (i) Pay a fine of not more than \$2,000.
 - (ii) Imprisonment of not more than one year.

Note

This section is based on § 37(B) of the MVSFA.

§ 4273. Use of unlicensed collector-repossessor.

A licensed seller or sales finance company acting as holder of a motor vehicle installment sale contract who hires, authorizes or permits an unlicensed collector-repossessor, as defined in this chapter, to collect payments on the contract or repossess a motor vehicle sold under the contract within the Commonwealth shall be guilty of a violation of this chapter and upon conviction shall be sentenced at the discretion of the court to the following:

- (1) Pay a fine of not more than \$2,000 for the first offense.

(2) For each subsequent offense, to either or both of the following:

- (i) Pay a fine of not more than \$2,000.
- (ii) Imprisonment of not more than one year.

Note

This section is based on § 37(C) of the MVSF.A.

§ 4274. Civil penalty by department.

A person required to be licensed under this chapter that violates this chapter, directs a violation of this chapter or engages in an activity for which a license could be suspended or revoked under section 4218 (relating to revocation or suspension of license) shall be subject to a civil penalty levied by the department of not more than \$2,000 for each offense.

Note

This section is based on § 37(D) of the MVSF.A.

§ 4275. Liability of sales finance company.

(a) Exemption from liability.--A sales finance company licensed under this chapter and engaged in the purchase, sale, assignment, securitization or servicing of installment sale contracts may not be held liable under this chapter for either the following:

- (1) Excessive mark-ups of charges by installment sellers.
- (2) A failure to disclose under section 4221(e) (relating to requirements).

(b) Federal status preserved.--This section does not affect the liability of a sales finance company that is a holder under the Federal Trade Commission Act (15 U.S.C. § 41 et seq.).

Note

Subsection (a) is based on § 37(E) of the MVSFA. Subsection (b) is not contained in the MVSFA.

Comment

Subsection (b) refers to the Trade Regulation Rule concerning the Preservation of Consumers' Claims and Defenses (the Federal "Holder-in-Due-Course Rule"), as set forth in 16 C.F.R. Part 433.

TRANSITIONAL LANGUAGE

APPLICABILITY

(1) The remedies under Chapter 42 (relating to motor vehicle sales finance) for violation of a section of the chapter are not exclusive and shall be in addition to other procedures or remedies for a violation or conduct provided for in other law.

(2) Chapter 42 applies to any license, license renewal and license application issued or made on or after the effective date of the chapter.

(3) Chapter 42 does not apply to or affect the validity of the following:

(i) A license issued prior to the effective date of the chapter.

(ii) A contract that is otherwise within the purview of the chapter and was made prior to the effective date of the chapter.

REPEALS

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of 12 Pa.C.S.

(2) The act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act, is repealed.

EFFECTIVE DATES

The following shall take effect in one year:

- (1) The addition of 12 Pa.C.S. Part IV (relating to consumer credit).
- (2) The repeal of the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

SOURCE TABLES*

MVSFA Section	12 Pa.C.S. Section
1	4201
2	--
3	4202
4	4211(a)
5(A)	4212(a) and 4216(1)
5(B)	4212(b)
5(C)	4212(c)
5(D)	4219(a)
5(E)	4216(2)
6(A)	4213
6(A) second sentence	4213 comment
6(B)	4219(b)
6(C)	4216(4)(i)
7(A)	4214(a)
7(B)	4219(c)
7(C)	4214(b)
7(D) first sentence	4211(b)
7(D) second sentence	4216(4)(ii)
7(E)	4206
8(A)	4215(a) and (b)
8(B)	4211(c)
8(C)	4215(c)
8(D)	4219(d)
9(A)	4217(a)
9(A)(3)	4217(b)(2) and (3)
9(C)	4217(c)
10(A) introductory language	4218(a) introductory language and 4218(b)
10(A)(1) through (11)	4218(a)(1) through (11)
10(A)(12)	4218(a) introductory language
10(A)(13)	4218(a)(12)
10(A)(14) first sentence	4218(a)(13)
10(A)(14) second sentence	4203(a)(7)
10(A)(14) third sentence	4210(a)
10(A)(14) last sentence	4210(b)
10(B)	4219(e)
10(C)	4217(b)(1) and (3)
10(D)	4205

* These source tables list a provision in the act of June 28, 1947 (P.L.1110, No.476) as amended, known as the Motor Vehicle Sales Finance Act (MVSFA), and its comparable provision in proposed 12 Pa.C.S. Chapter 42.

MVSFA Section	12 Pa.C.S. Section
11(A) and (B)	4203(a)(1), (2) and (3)
11(A)	4203(b)
11(B)	4203(c)
11(C)	4203(d)
12(A) through (D)	4204
12(E)	4203(a)(4)
13(A) and (B)	4221(a)
13(C)	4221(b)(1) and (2)
13(D)	4222(4) and 4223
13(E)	4221(c)
13(F)	4221(d)
13(F)(4)	4221(f)
13(G)	4221(e)
14(A)	4222(1), (2) and (3)
14(B)(1) through (9)	4222(5)(i) through (ix)
14(B)(10)	4226
14(B)(10.1) first sentence	4224
14(B)(10.1) second sentence	4225
14(C)	4222(6)
14(D)	4222(7)
14(E)	4222(8)
14(F)	4227
14(G)	4224
15	4228(1), (2)(i) through (iv) and (3) through (7)
16(A), (B) and (C)	4229(a), (b) and (c)
16(D)	4229(e)
16(E)	4229(d)
17(A) first sentence	4241(b)
17(A) second, third and fourth sentences	4241(a)
17(B)	4241(b)
17(C)	4241(c)(1) through (4)
17(D)	4241(c)(5)
17(E)	4241(c)(6) and (7)
17(F) and (G)	4241(d)
18(A), (B) and (C)	4242(a), (b) and (c)
18(D) first sentence	4242(d)
18(D) second sentence	4242(e)
18(E)	4242(f)(1) and (3)
19(A)	4243(a), (c), (d) and (e)
19(B) and (C)	4243(b)(2)
19(D)	4243(b)(3)
19(E)	--
19(F)	4243(f)
20(A)	4244(a)(1)(i) and (ii)
20(B)	4244(a)(1)(iii) and (2) 4244(b)(1) and (2) 4244(c) and (d)
20(C)	4244(e), (f) and (g)

MVSFA Section	12 Pa.C.S. Section
21	4245
22	4246
23(A) first sentence	4251(a)
23(A) second sentence	4251(b)
23(B) first sentence	4252(a)
23(B) second sentence	4252(b)
23(C) first sentence	4253(a)
23(C) second sentence	4253(b)
23(D) first sentence	4254(a) and (b)
23(D) second sentence	4254(c)(1) through (5)
23(D) third sentence	4254(c)(6)
23(D) fourth sentence	4255
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23(E)	4256
23(F)	4203(a)(6)
23(G)(1) and (2)	4262(a)
23(G)(3)	4262(b)(1) and (2)
23(G)(4)	4262(b)(3)
23(G)(5), (6) and (7)	4262(c), (d) and (e)
23(H)	4257
24	4258
25(A) and (B)	4259(a) and (b)
25(C) first sentence	4259(c)(1)
25(C) second sentence	4259(c)(2)
25(D)	4259(c)(3)
26	4260(a) and (b)
27 first sentence	4261(a) and (b)
27 second sentence	4261(c)
27 last sentence	4261(e) (conceptually)
28(A) and (B)	4230
28(C)	4221(b)(3)
29(A)	4231(a)
29(B)	4231(b)(1), (2) and (3)
29(C)	4231(b)(4) and (5)
29(D)	4231(c)
30	4232
31(A)	4233(a) and (b)
31(B) and (C)	4233(d) and (e)
32	4234(a)
33	Transitional language
34(A)	4235(a) and (b)
34(B) and (C)	4235(c) and (d)
35(A) first sentence	4236(a)
35(A) second sentence	4236(b)
35(B)	4236(c)
36	4209
37(A)	4271

MVSFA Section	12 Pa.C.S. Section
37(B)	4272
37(C)	4273
37(D)	4274
37(E)	4275(a)
37.1	4203(a)(5)
38	Transitional language
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12 Pa.C.S. Section	MVSFA Section
4201	1
4202	3
4203(a)(1), (2) and (3)	11(A) and (B)
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OTHER PROPOSED RECOMMENDATIONS

Throughout its discussions of proposed Chapter 42 of the Consumer Credit Code and issues regarding motor vehicle sales finance, the Advisory Committee reached consensus on the following non-statutory recommendations:

- (1) The Advisory Committee recommends that the Pennsylvania Department of Insurance and the Pennsylvania Department of Transportation continue to monitor the situation in which an installment seller, in an attempt to sell a motor vehicle and “get the buyer out the door,” provides the buyer with temporary insurance (e.g., a 30-day policy) on the seller’s policy. The buyer may not even be aware that the insurance is temporary. After 30 days, the buyer is dropped from the seller’s insurance. During the 30-day period, however, the temporary insurance could cost the buyer a disproportionate amount of money for such short-term coverage.
- (2) The Advisory Committee recommends that the Pennsylvania Department of Transportation review its procedures regarding the titling of repossessed motor vehicles and manufactured homes, in light of the disparity of procedures for financial institutions and non-financial institutions. Under current practices, non-financial institutions must obtain a court order before the motor vehicle or manufactured home may be re-titled, even though ownership is not at issue.
- (3) The advisory committee recommends that the Pennsylvania Department of Banking and the Pennsylvania Department of Transportation promulgate procedures to encourage the more timely release of titles and discuss the need for the imposition of fines for any unwarranted delay in releasing titles.

MOTOR VEHICLE SALES FINANCE ACT
Act of Jun. 28, 1947, P.L. 1110, No. 476 Cl. 12

AN ACT

Defining and regulating certain installment sales of motor vehicles; prescribing the conditions under which such sales may be made and regulating the financing thereof; regulating and licensing persons engaged in the business of making or financing such sales; prescribing the form, contents and effect of instruments used in connection with such sales and the financing thereof; prescribing certain rights and obligations of buyers, sellers, persons financing such sales and others; limiting incidental charges in connection with such instruments and fixing maximum interest rates for delinquencies, extensions and loans; regulating insurance in connection with such sales; regulating repossessions, redemptions, resales and deficiency judgments and the rights of parties with respect thereto; authorizing extensions, loans and forbearances related to such sales; authorizing investigations and examinations of persons engaged in the business of making or financing such sales; prescribing penalties and repealing certain acts.

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

Section 1. Short Title.

This act shall be known and may be cited as the "Motor Vehicle Sales Finance Act."

Section 2. Findings and Declarations of Policy.

It is hereby determined and declared as a matter of legislative finding:

(a) That an exhaustive study by the Joint State Government Commission discloses nefarious, unscrupulous and improper practices in the financing of the sale of motor vehicles in this Commonwealth which are unjustifiably detrimental to the consumer and inimical to the public welfare. Such practices prevail not only among some sellers, but also among some sales finance companies and some banks, which acquire contracts arising out of installment sales of motor vehicles, and which frequently influence the credit policies of sellers.

(b) That the agreement for the installment sale of motor vehicles in this Commonwealth has been generally cast in the form of the so-called "Pennsylvania Bailment Lease" contract, in which the seller is technically the lessor, and the buyer is technically the lessee. By the use of this fictional instrument in the installment sale of motor vehicles, the extension of credit to the purchaser has been so inextricably entwined with the alleged bailment of the motor vehicle as to deprive the consumer of the benefit of existing laws.

(c) The consumers, because of these legal technicalities and because of their unequal bargaining position, are at the mercy of unscrupulous persons and are being intolerably exploited in the installment purchase of motor vehicles. Such exploitation is evident in the unfair provisions of the installment sale contract, exorbitant charges for credit, extortionate default, extension, collection, repossession and other charges, unconscionable practices respecting execution of contracts, refinancing of contracts, prepayment, refunds, insurance, repossession and redemption.

(d) That practices enumerated, and others equally pernicious, have existed to such an extent that regulation of the installment selling of motor vehicles is necessary to the adequate protection of the public interest. Adequate regulation of installment selling must include control of the functions of selling and financing of motor vehicles, whether exercised by the same or by different persons.

Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to promote the welfare of its inhabitants and to protect its citizens from abuses presently existing in the installment sale of motor vehicles, and to that end exercise the police power of the Commonwealth to bring under the supervision of the Commonwealth all persons engaged in the business of extending consumer credit in conjunction with the installment sale of motor vehicles; to establish a system of regulation for the purpose of insuring honest and efficient consumer credit service for installment purchasers of motor vehicles; and to provide the administrative machinery necessary for effective enforcement.

Section 3. 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. "Motor vehicle" shall mean any self-propelled device in which, upon which, or by which any person or property is or may be transported or drawn upon a public highway, excepting tractors, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway, and excepting such devices which move upon or are guided by a track or travel through the air and shall include trailers and semi-trailers.

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

3. "Installment buyer" or "buyer" shall mean the person who buys, hires or leases a motor vehicle under any installment sale contract or any legal successor in interest to such person, and shall continue to designate such person notwithstanding he may have entered into one or more extensions, deferments, renewals or other revisions of the original contract, and includes any person who as surety, endorser, guarantor, or otherwise, is liable on the obligation created by the buyer under an installment sale contract.

4. "Installment seller" or "seller" shall mean a person engaged in the business of selling, hiring or leasing motor vehicles under installment sale contracts or any legal successor in interest to such person.

5. "Holder" shall mean any person, including a seller, who is currently entitled to the rights of a seller under an installment sale contract.

6. "Sales finance company" shall mean a person engaged as principal, agent or broker in the business of financing or soliciting the financing of installment sale contracts made between other parties, including but not thereby limiting the generality of the foregoing, the business of acquiring, investing in or lending money or credit on the security of such contracts or any interest therein whether by discount, purchase or assignment thereof, or otherwise: Provided, That the term shall not include any person to the extent that he makes bona fide commercial loans to sellers or sales finance companies and takes assignments of, or an interest in, an aggregation of installment sale 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. The term shall include any seller, whether or not licensed under this act, as a seller who finances installment sale contracts for other sellers or sales finance companies.

7. "Collector-repossessor" shall mean a person who collects payments or installment sale contracts or repossesses motor vehicles, which are the subject of installment sale contracts, as an independent contractor and not as a regular employe of a seller or sales finance company, excluding duly constituted public officials or attorneys-at-law when acting in an official capacity, and excluding a licensed seller or licensed sales finance company making collections or repossessions on installment sale contracts wherein such seller or sales finance company was previously a "holder," or wherein such seller or sales finance company, not having previously been a "holder," occasionally makes collections or repossessions for other licensed sellers or sales finance companies. The term shall include any combination of the above activities.

8. "Banking institution" shall mean 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.

9. "Retail sale" shall mean the sale of a motor vehicle for use by the buyer, or for the benefit or satisfaction which the buyer may derive from the use of the motor vehicle by another.

10. "Installment sale contract" or "contract" shall mean any contract for the retail sale of a motor vehicle, or which has a similar purpose or effect under which part or all of the price is payable in two or more scheduled payments subsequent to the making of such contract, or as to which the obligor undertakes to make two or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in such motor vehicle or has taken collateral security for the buyer's obligation, and shall include any loan, any mortgage, any conditional sale contract, any purchase-money chattel mortgage, any hire-purchase agreement or any contract for the bailment or leasing of a motor vehicle under which the hire-purchaser, the bailee or lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle and any other form of contract which has a similar purpose or effect: Provided, however, That the terms shall not include any sale or contract for sale upon an open book account, wherein the seller has not retained or taken

any security interest in the motor vehicle sold or any collateral security for the buyer's obligation, and wherein the buyer is not required to pay any sum other than the cash price of the motor vehicle sold in connection with such sale or extension of credit, and wherein the buyer is obligated to pay for the motor vehicle in full within ninety (90) days from the time the sale or contract for sale was made: Provided, also, That the terms shall not include a right to acquire possession of goods pursuant to a lease unless the lease constitutes a security interest as defined in 13 Pa.C.S. § 1201 (relating to general definitions) and is subject to 13 Pa.C.S. Div. 9 (relating to secured transactions). These terms shall also mean and apply to any extension, deferment, renewal or other revision of such installment sale contract.

(10 amended Dec. 9, 2002, P.L.1446, No.186)

11. "Cash price" shall mean the price measured in dollars at which the seller would in good faith sell to the buyer or to any other buyer under like circumstances, and the buyer would in good faith buy from the seller, the motor vehicle which is the subject matter of the installment sale contract, if such sale were a sale for cash instead of an installment sale.

(11 amended Dec. 9, 2002, P.L.1446, No.186)

12. "Down payment" shall mean all partial payments whether made in cash, or otherwise, received by or for the benefit of the seller prior to or substantially contemporaneous with either the execution of the installment sale contract or the delivery of the goods sold thereunder, whichever occurs later.

13. "Principal amount financed" shall mean the unpaid cash price balance after deducting the down payment, adding the charges for any insurance required or obtained as security for or by reason of the sale of a motor vehicle under an installment sale contract, and adding other costs or charges necessary or incidental to the sale of the motor vehicle under an installment sale contract and amounts representing payment of a prior credit or lease balance to discharge a security interest, lien or lease interest on a motor vehicle or other property traded or returned.

(13 amended Dec. 9, 2002, P.L.1446, No.186)

13.1. "Charges" shall mean the price measured in dollars in which the seller would in good faith sell to the buyer or to any other buyer under like circumstances, and the buyer would in good faith buy from the seller, any goods and services which are subject to the installment sale contract if the sale were a sale for cash instead of an installment sale.

(13.1 added Dec. 9, 2002, P.L.1446, No.186)

13.2. "Charges for insurance" shall mean premiums, commissions and other payments authorized by insurance statutes or regulations of this Commonwealth.

(13.2 added Dec. 9, 2002, P.L.1446, No.186)

14. "Finance charge" shall mean the amount of the consideration in excess of the cash price which the buyer is required to pay to the seller for the privilege of purchasing a motor vehicle under an installment sale contract, or for the credit extended by the seller to the buyer in conjunction with the sale of a motor vehicle under an installment sale contract, or it shall mean the differential between the cash sale price of the motor vehicle and the installment sale price, exclusive of charges for insurance and other charges necessary or incidental to an installment sale and any default charges, which are specifically authorized by this act to be included in an installment sale contract.

(14 amended Dec. 9, 2002, P.L.1446, No.186)

15. "Time balance" shall mean the sum of the principal amount financed and the finance charge.

16. "Security interest" shall mean a security interest as provided by 13 Pa.C.S. Div. 9 (relating to secured transactions).

(16 amended Dec. 9, 2002, P.L.1446, No.186)

17. "Collateral security" shall mean any security, other than a security interest in a motor vehicle, which is the subject of an installment sale contract, which is given to secure performance of any obligation of the buyer or of any surety or guarantor for him under an installment sale contract, extension, deferment, renewal or other revision thereof, and the term shall include the undertakings of any surety or guarantor for the buyer and any interest in encumbrance on or pledge of real or personal property other than the motor vehicle which is the subject of the installment sale contract.

18. "Department" shall mean the Department of Banking of the Commonwealth.

(18 amended Dec. 9, 2002, P.L.1446, No.186)

19. "Licensee" shall mean a person to whom has been issued a license under this act as an installment seller, or as a sales finance company, or as a collector-repossessor, which license has not expired, has not been surrendered or revoked; and in the plural shall mean any or all persons so licensed under any or all of these three classifications.

20. "Commercial purpose" shall mean a purpose related to the production, exhibition, marketing, transportation, processing, or manufacture of goods or services by any person.

(20 added June 19, 1974, P.L.364, No.121)

21. "Mobile homes" shall mean those vehicles defined as such in section 102 of Title 75, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added June 17, 1976 (P.L.162, No.81).

(21 added July 1, 1978, P.L.725, No.130)

22. "Heavy commercial motor vehicle" shall mean any new or used motor vehicle which is:

(i) a truck or truck tractor having a manufacturer's gross vehicular weight of fifteen thousand (15,000) pounds or more; or

(ii) a semi-trailer or trailer designed for use in combination with a truck or truck tractor.

(22 added Apr. 4, 1990, P.L.110, No.25)

23. "Secretary" shall mean the Secretary of Banking of the Commonwealth.

(23 added Dec. 9, 2002, P.L.1446, No.186)

24. "Debt cancellation agreement" shall mean a loan term or contractual arrangement modifying loan terms linked to a holder's extension of credit under which the holder agrees to cancel all or part of a buyer's obligation to repay an extension of credit from that holder upon the occurrence of a specified event.

(24 added Dec. 9, 2002, P.L.1446, No.186)

25. "Debt suspension agreement" shall mean a loan term or contractual arrangement modifying loan terms linked to a holder's extension of credit under which the holder agrees to suspend all or part of a buyer's obligation to repay an extension of credit from that holder upon the occurrence of a specified event.

(25 added Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 4. Licenses Required.

On and after the effective date of this act no person shall engage or continue to engage in this Commonwealth either as principal, employe, agent or broker;

1. In the business of an installment seller of motor vehicles under installment sale contracts, except as authorized in this act, under license issued by the department, or
2. In the business of a sales finance company, except as authorized in this act, under license issued by the department, or
3. In the business of a collector-repossessor, except as authorized in this act, under license issued by the department.

(4 amended Dec. 9, 2002, P.L.1446, No.186)

Section 5. Applications for Licenses.

A. Applications for licenses under this act shall be in writing, under oath, and in the form prescribed by the department.

B. The application shall contain the name under which the business is conducted, the address of the place of business, the date of registration of the fictitious or trade name, if any, with the Secretary of the Commonwealth; the date and place of incorporation, if the applicant is a corporation; the name and residence address of the owner, if the applicant is an individual owner; the name and residence address of all owners, partners or members, if the applicant is a partnership or association; the name and address of all officers and directors, if the applicant is a corporation, and such other information as the department may require.

C. All applications filed by associations or corporations shall be accompanied by a power of attorney showing the name and address of the authorized agent in the Commonwealth of Pennsylvania upon whom all judicial and other process or legal notice may be served, and in the case of the death, removal from the Commonwealth or any legal disability or disqualification of such agent, service of such process or notice upon the department shall be authorized.

D. A separate application, on the prescribed form, shall be filed for each place of business conducted by or to be established by a licensee within the Commonwealth of Pennsylvania.

E. All applications for renewal licenses shall be filed at least fifteen (15) days prior to October first, annually.

(5 amended Dec. 9, 2002, P.L.1446, No.186)

Section 6. License; Bonds.

A. A bond, in the form prescribed by the department, in the penal sum of five thousand dollars (\$5,000), shall accompany every application for license as a sales finance company and for license as a collector-repossessor. Such bond shall be executed by a surety company authorized by the laws of Pennsylvania to transact business within this Commonwealth: Provided, That the bond accompanying an application for license as a sales finance company, filed by a banking institution located within this Commonwealth, may be executed by such banking institution on its own behalf, in lieu of a bond executed by a surety company. The bond shall be executed to the Commonwealth of Pennsylvania and shall be for the use of the Commonwealth and for any person or persons. The condition of the bond shall be that the licensee will comply with and abide

by all the provisions of this act, and all the rules and regulations of the department lawfully issued, and that the licensee will pay to the Commonwealth, to the department or to any person or persons, any and all moneys that may become due to the Commonwealth, to the department or to any person or persons from the said licensee under and by virtue of the provisions of this act. If any person shall be aggrieved by the misconduct of a licensee and shall recover judgment against such licensee, such person may, on any execution issued under such judgment, maintain an action upon the bond of the licensee in any court having jurisdiction of the amount claimed, provided the department assents thereto.

B. A bond in the form prescribed shall be filed for each place of business conducted by a finance company and for each place of business conducted by a collector-repossessor within the Commonwealth of Pennsylvania.

C. A new bond shall accompany every application for renewal license and shall be filed at least fifteen (15) days prior to October first, annually.

(6 amended Dec. 9, 2002, P.L.1446, No.186)

Section 7. License Fees.

A. Each application for license shall be accompanied by a license fee as set forth in section 603-A of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

B. A separate license fee of like amount shall be paid for each place of business conducted by a licensee within the Commonwealth of Pennsylvania.

C. No abatement in the amount of the said license fee shall be made if the license is issued for less than one year, or if the license is surrendered, cancelled or revoked prior to the expiration of the license year for which such license was issued.

D. All licenses under this act shall expire on October first, annually. A renewal license fee in the same amount shall be paid annually on or before October first for each respective type of license and for each place of business.

E. All license fees and fines received by the department under this act shall be deposited in the State Treasury to the credit of a special fund for the use of the department in administering this and other laws of the Commonwealth placed under its administration.

(7 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: Section 6(a) of Act 48 of 1981, which provided for the fixing of fees charged by administrative agencies, provided that subsection A is repealed insofar as it establishes a set fee for any activity inconsistent with the fees set forth in Act 48.

Section 8. Approval of Licenses and Issuance of Licenses.

A. If the department approves an application for license, it shall issue to the applicant a license certificate showing the name of the person authorized to do business thereunder and the address of the licensee. Such license certificate when issued to an installment seller or to a sales finance company shall be posted in a conspicuous place in the place of business of the licensee, so that it will be in full view of the public at all times; and when issued to a collector-repossessor shall be carried in the immediate possession of the licensee whenever he is engaged in the type of business for which the license is issued, so

that it may be presented for inspection upon request of any person entitled to such inspection.

B. A license shall not be transferred or assigned.

C. A licensee may change his place of business to another location within the same municipality for which the license certificate was issued. A licensee desiring to change the address of his place of business shall give prior written notice thereof to the department and shall return the license certificate to the department for amendment. The department shall amend the license certificate to show the new address and the date thereof, which shall thereafter be the authorized address of the licensee. A licensee shall not be required to pay any charge for amendment of a license certificate to effect change of address.

D. Only one place of business may be operated under the same license: Provided, however, That where every place of business is conducted under one name and the business records are kept in one place only one license shall be required. This proviso shall apply only to installment sellers. A licensee may operate more than one place of business by filing an application on the prescribed form for each additional place of business and by furnishing a bond for each additional place of business in the case of a sales finance company and collector-repossessor and by paying the respective license fee provided in this act for each additional place of business.

(8 amended Dec. 9, 2002, P.L.1446, No.186)

Section 9. Rejection of Application.--

A. The department may reject any application for license or any application for renewal of a license because of any of the following:

(1) If the applicant has made a material misstatement in the application.

(2) For any of the grounds stated in subsection A of section 10.

(3) If the department is not satisfied that the financial responsibility, character, reputation, integrity and the general fitness of the applicant and of the owners, partners or members thereof, if the applicant be a partnership or association, and of the officers and directors, if the applicant be a corporation, are such as to command the confidence of the public and to warrant the belief that the business for which application for license is filed will be operated lawfully, honestly, fairly and within the legislative intent of this act and in accordance with the general laws of this Commonwealth: Provided, however, That no license may be issued if the applicant, any affiliate, owner, partner, member, officer, director, employe, agent or spouse of the applicant has pleaded guilty, entered a plea of nolo contendere, or has been found guilty by a judge or a jury for engaging in any business for which a license is required under this act without having obtained a license under this act, or if the applicant, any affiliate, owner, partner, member, officer, director, employe, agent or spouse of the applicant has pleaded guilty, entered a plea of nolo contendere, or has been found guilty by a judge or a jury of a second offense violation of this act under the penal section of this act applicable to licensees and had its license revoked.

C. Whenever the department rejects an application for license, it shall return the license fee which accompanied the application: Provided, however, All or any portion of the license fee may be retained by the department if rejection is based wholly or partially upon false information furnished by the applicant in the application.

(9 amended Dec. 9, 2002, P.L.1446, No.186)

Section 10. Revocation or Suspension of Licenses.

A. The department, upon thirty (30) days' written notice to the licensee, forwarded by registered mail to the place of business of such licensee, as shown in the application for license or as amended on the license certificate in case of change of address subsequent to issuance of the license certificate, may revoke or suspend any license if it finds that:

1. The licensee has made any material misstatement in the application for license, or that

2. The licensee has violated any provision of this act, or that

3. The licensee has violated any rule or regulation issued by the department under and within the authority of this act, or that

4. The licensee has failed to comply with any demand, rule or regulation lawfully made by the department under and within the authority of this act, or that

5. The licensee refuses or has refused to permit the department to make examinations authorized by this act, or that

6. The licensee in the case of a finance company and collector-repossessor has failed to maintain in effect the bond required under the provisions of this act, or that

7. The licensee has failed to maintain satisfactory records required by this act or prescribed by the department, or that

8. The licensee has falsified any records required by this act to be maintained of the business contemplated by this act, or that

9. The licensee has failed to file any report with the department within the time stipulated in this act, or that

10. The licensee has failed to pay the fine required by this act for failure to file reports to the department within the time stipulated, or that

11. The licensee has defrauded any retail buyer to the buyer's damage or wilfully failed to perform any written agreement with any retail buyer, or that

12. Any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for such license, would have warranted the department in refusing to issue such license.

13. The licensee has:

(i) failed to collect any tax or fee due the Commonwealth upon any sale of a vehicle;

(ii) collected any such tax or fee and failed to issue a true copy of the tax report to the purchaser, as required by law;

(iii) issued a false or fraudulent tax report or copy thereof; or

(iv) failed to pay any tax or fee over to the Commonwealth at the time and in the manner required by law.

14. The licensee has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act, including making excessive mark-ups to charges for items described in clause 1, 5 or 10.1 of subsection B of section 14 or subsection E of section 18 or mark-ups of costs in violation of subsection D of section 18. The department shall adopt a statement of policy that contains guidelines determining mark-ups that the department finds, after reasonably considering relevant market data, not to be excessive and shall update and revise the

statement of policy to reflect changing business conditions. Mark-ups consistent with the guidelines shall not be deemed excessive. Mark-ups in excess of the guidelines and, until such time as the department adopts its guidelines, mark-ups for service contracts, warranties, debt cancellation agreements and debt suspension agreements in excess of 100% of the cost to the dealer shall be deemed excessive.

B. The department may revoke or suspend only the particular license with respect to which grounds for revocation may occur or exist, but if the department finds that grounds for revocation are of general application to all places of business or to more than one place of business operated by a licensee, it may revoke all of the licenses issued to such licensee or those licenses to which grounds for revocation apply, as the case may be.

C. Whenever a license has been revoked, the department shall not issue another license to the licensee pursuant to the provisions of this act until the expiration of at least one (1) year from the effective date of revocation of said license; and not at all, if such licensee or any owner, partner, member, officer, director, employe, agent or spouse of the licensee shall have pleaded guilty, entered a plea of nolo contendere, or has been found guilty by a judge or a jury of a second offense violation of this act.

D. Appeals may be taken from the action of the department in suspending and revoking licenses or imposing civil penalties under subsection D of section 37 in accordance with the procedure prescribed by 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(10 amended Dec. 9, 2002, P.L.1446, No.186)

Section 11. Authority of Department.

A. The department is empowered to investigate, at any time, the business and affairs and examine the books, accounts, papers, records, documents and files of every licensee and of every person who shall be engaged in business contemplated by this act, whether such person shall act, or claim to act, as principal, agent or broker or under or without the authority of this act. For this purpose the department shall have free access to the offices and places of business, books, accounts, papers, records, documents and files of all such persons. A person who is not licensed under this act shall be presumed to be engaged in business contemplated by this act, if he, as principal, agent or broker advertises or solicits business for which a license is required by the provisions of this act, and the department is, in such cases, hereby empowered to examine the books, accounts, papers, records, documents, files, safes and vaults of such persons for the purpose of discovering violations of this act.

B. The department is empowered to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents and files relating to such business which the department has authority by this act to investigate, and for this purpose the secretary or a duly authorized representative may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena or the contumacy of any witness appearing before the department, the secretary may invoke the aid of the courts, and such court shall thereupon issue an order requiring the person subpoenaed to obey the subpoena, or to give evidence, or to produce books, accounts, papers, records, documents

and files relative to the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

C. The expenses incurred by the department in connection with any examination or investigation, including a proportionate part of the salary of any examiner or other employe of the department engaged in the examination or investigation and all counsel assigned by the department to an examination or investigation, may be assessed by the department upon the particular person examined or investigated.

(11 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: Section 508(a) of Act 223 of 1970 provided that the jurisdiction of the courts named in section 11 is transferred to and vested in the Commonwealth Court and provided that section 11 is repealed insofar as it relates to the Court of Common Pleas.

Compiler's Note: Section 14(a) of Act 185 of 1969 provided that the jurisdiction of the courts named in section 11 is vested in the Commonwealth Court and provided that section 11 is repealed insofar as it relates to the Court of Common Pleas.

Section 12. Records Required.

A. Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts and records of the business conducted under the license issued for such place of business as will enable the department to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

B. A licensee, operating two or more licensed places of business in this Commonwealth, may maintain the general control records of all such offices at any one of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the department designating therein the office at which such control records are maintained and upon approval of such request by the department.

C. All books, accounts and records of licensees shall be maintained in the English language.

D. All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the department for at least two (2) years after making the final entry therein.

E. The department is hereby authorized and empowered to prescribe the minimum information to be shown in the books, accounts and records of licensees so that such records will enable the department to determine compliance with the provisions of this act.

(12 amended Dec. 9, 2002, P.L.1446, No.186)

Section 13. Requirements as to Contracts and Separate Disclosure.

A. Every installment sale contract shall be in writing and shall contain all of the agreements between the buyer and the seller relating to the installment sale of the motor vehicle sold and shall be signed by both the buyer and the seller.

B. Every installment sale contract shall be completed as to all essential provisions prior to the signing of such contract by the buyer.

C. An exact copy of the installment sale contract shall be furnished by the seller to the buyer at the time the buyer signs such contract. Such buyer's copy of the contract shall contain the signature of the seller identical with such signature on the original contract. Such copy shall be furnished to the buyer without charge.

D. Every installment sale contract shall contain the following notice, printed prominently and in the form indicated in twelve (12) point type, or larger, directly above the space provided in the contract form for the signature of the buyer:

"Notice to Buyer.

Do not sign this contract in blank.

You are entitled to an exact copy of the contract you sign.

Keep it to protect your legal rights."

Provided, That in lieu of the word "Buyer" there may be substituted either of the words "Lessee" or "Mortgagor" and in lieu of the word "contract" there may be substituted either of the words "lease" or "mortgage."

E. The seller shall obtain from the buyer a written acknowledgment of the delivery of the copy of the contract to the buyer. Such acknowledgment shall be printed in twelve (12) point type, or larger, and, if attached to the contract, it shall be printed below the buyer's signature to the contract and shall be independently signed.

F. Every installment sale contract shall provide for payment of the time balance in substantially equal periods and in substantially equal amounts except:

1. When the buyer expects his income to vary because of seasonal employment, seasonal sales, use of accelerated depreciation for tax purposes or other known cause, the contract may provide for payment of the time balance in amounts which vary with such expected varying income.

2. An installment sale contract for the sale of a heavy commercial motor vehicle shall be exempt from the requirement that payments must be for substantially equal periods and in substantially equal amounts.

3. An installment sale of a new motor vehicle to a bona fide salesman or of motor vehicles to be used by him principally as a demonstrator shall be exempt from the equal payment schedule requirement of this section.

4. Where the installment sale contract provides for fixed residual value financing. As used in this clause, "fixed residual value financing" shall mean the manner of purchase whereby a buyer who is listed as the owner on the title of the vehicle agrees to select and perform, at the conclusion of a predetermined schedule of installment payments made in substantially equal periods and in substantially equal amounts, one of the following options:

- (a) satisfy the balance of the contractual amount owing;

- (b) refinance any balance owing on the terms previously agreed upon at the time of executing the installment sale contract; or

- (c) surrender the motor vehicle at such time and manner agreed upon at the time of executing the installment sale contract.

G. Prior to the execution of an installment sale contract by any party, the seller shall provide to the applicant buyer both an oral disclosure and a written disclosure in plain language separate from the installment sale contract to be signed by the applicant buyer prior to the signing of the installment sale contract. The executed, written disclosure shall be copied exactly and furnished by the seller to the applicant buyer at no cost at the time

the buyer receives a copy of the installment sale contract. The separate disclosure required under this subsection shall:

1. Advise the applicant that the buyer's purchase of specific items related to acquiring the motor vehicle, including incidental items such as service contracts, warranties, debt cancellation agreements, debt suspension agreements and insurance products not required by section 17, but excluding options and accessories physically attached to the vehicle, is voluntary and is not required as a condition of the applicant buyer's receiving the installment sale contract loan.

2. Be complete without any blank spaces.

(13 amended Dec. 9, 2002, P.L.1446, No.186)

Section 14. Contents of Contract and Disclosure Requirements.

(Hdg. amended Dec. 9, 2002, P.L.1446, No.186)

- A. Every installment sale contract shall state the full names and addresses of all the parties thereto, the date when signed by the buyer and shall contain a description of the motor vehicle sold which shall be sufficient for accurate identification.

- B. Every installment sale contract shall set forth clearly and conspicuously in writing the following separate items as such and other information as applicable:

1. Cash price of the motor vehicle. This amount may include any taxes, charges for delivery, charges for servicing, repairing or improving the motor vehicle, charges for service contracts and warranties which alternatively shall be disclosed pursuant to clause 5, charges for accessories and installation or other charges normally included in the delivered cash price of such motor vehicle. The cash price of the motor vehicle otherwise may not include charges required to be disclosed pursuant to clause 5. If the cash price contains charges for service contracts or warranties, then, adjacent to the "cash price" listed on the contract in type print size not smaller than the type size used for all item categories, shall be included the boldface and underlined words or substantially similar words "including optional service contracts and/or warranties in the amount of"; and then the separately itemized charges for the service contract and warranty shall be specifically stated in the contract and warranty items.

2. Down payment made by the buyer at the time of or prior to execution of the contract, indicating whether made in cash, or represented by the agreed value of a "trade-in" motor vehicle, or other goods, or both. The amount of cash and/or the value of any "trade-in" shall be shown separately. A description of the "trade-in," if any, sufficient for identification shall be shown.

3. Unpaid cash balance which shall be the difference between the cash price (Item 1) and the down payment (Item 2) above.

4. Charges for insurance the payment of which the seller agrees to extend credit to the buyer. The term of such insurance, a concise description of the coverage and the amount of the premium shall be set forth. If the precise charges for insurance are not available at the time the contract is signed, an estimated amount, ascertained from a chart prepared by the licensee and approved by the department, may be set forth in the contract. When the charges for insurance are so estimated, the contract shall so state and it shall contain notice to the buyer that the difference between the estimated charges and the actual charges for the insurance, including finance charges on such amount, will be adjusted at the time of the final payment on the contract, and a

statement of the amount of the adjustment shall be furnished to the buyer simultaneously with the delivery of the insurance policy or certificate.

5. Other charges, necessary or incidental to the sale or financing of a motor vehicle, which the seller contracts to retain, receive or pay on behalf of the buyer and any other charges necessary or incidental to the sale or financing of the motor vehicle under the contract for which the seller agrees to extend credit to the buyer as authorized by this act , including charges for debt cancellation agreements and debt suspension agreements.

6. Principal amount financed which shall be the total of the unpaid cash price balance (Item 3) plus charges for insurance (Item 4) plus other charges (Item 5) for which the seller agrees to extend credit to the buyer.

7. Finance charge which is the consideration in excess of the cash price (Item 1), excluding charges for insurance (Item 4), and other charges (Item 5), which the buyer agrees to pay to the seller for the privilege of purchasing the motor vehicle under the installment sale contract.

8. Time balance which shall be the total of the principal amount financed (Item 6), plus the finance charge (Item 7), and which shall represent the total obligation of the buyer which he agrees to pay in two or more scheduled payments.

9. Payment schedule which shall state the number of payments, the amount of the payments and the time of the payments required to liquidate the time balance.

10. Notwithstanding any provisions of this act or any other law to the contrary, the finance charge percentage rate included in an installment sale contract for the sale of a heavy commercial motor vehicle may vary during the term thereof pursuant to a formula or index set forth therein that is made readily available to and verifiable by the buyer and is beyond the control of the holder of the contract. For the purpose of disclosing the amount of finance charge (Item 7) and time balance (Item 8) and setting forth a payment schedule (Item 9), such amounts may be calculated using the finance charge percentage rate applicable to the transaction as of the date of execution of the contract, notwithstanding the fact that such finance charge percentage rate may increase or decrease over the term of the contract according to a formula or index set forth in the contract.

10.1. Charges for warranties, charges for service contracts, charges for insurance for each policy of insurance required to be disclosed pursuant to clause 4, charges required to be disclosed pursuant to clause 5 and costs and charges authorized in section 18 shall be separately itemized in the contract as to nature and amounts of the cost or charge to the buyer. If the seller retains a portion of the charge of a good or service which is provided by others, the seller shall disclose that the seller may retain a portion of the charges.

(B amended Dec. 9, 2002, P.L.1446, No.186)

C. Every installment sale contract shall provide a description that reasonably identifies any collateral security in which a security interest is provided to secure the buyer's obligation pursuant to 13 Pa.C.S. § 9108 (relating to sufficiency of description), including the motor vehicle and any other collateral.

(C amended Dec. 9, 2002, P.L.1446, No.186)

D. Every installment sale contract shall contain a summary notice of the buyer's principal legal rights respecting prepayment of the contract and rebate of finance charge and reinstatement of the contract in the event of repossession.

E. Every installment sale contract shall contain specific provisions as to the holder's right to accelerate the maturity of the contract upon default or other breach of contract and as to the buyer's liability respecting nonpayment, the dollar or percentage amount of any default charges which may be imposed due to a late payment, other than a deferral or extension charge, repossession and sale of the motor vehicle, in case of default or other breach of contract, and respecting the collateral security, if any.

(E amended Dec. 9, 2002, P.L.1446, No.186)

F. Every installment sale contract for the sale of a mobilehome or house trailer may contain a provision which shall require the buyer to pay any and all real estate taxes which may thereafter be levied upon said vehicle and which shall require the buyer to furnish the seller or holder with proof of payment thereof in such manner and at such times as the contract may prescribe. The contract may further provide for acceleration of payments and/or give the seller or holder the right to repossess the vehicle upon the buyer's failure to pay such taxes or furnish proof thereof as required. If the mobilehome or house trailer is sold by any tax levying unit of government for nonpayment of real estate taxes by such buyer, any lien or encumbrance contained on the title of the vehicle pursuant to "The Vehicle Code" or any encumbrance filed of record against the vehicle under the provisions of the "Uniform Commercial Code" shall not be affected or divested.

(F added Sept. 23, 1961, P.L.1614, No.683)

G. Charges enumerated in this section and costs and charges authorized by section 18 shall be separately itemized in the contract.

(G added Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 15. Prohibited Provisions of Contract.

A. No installment sale contract shall be signed by any party thereto when such contract contains blank spaces to be filled in after such contract has been signed. This provision shall not apply to serial numbers or other identifying marks which are not available for description of the motor vehicle at the time of execution of the contract.

B. No installment sale contract shall contain any acceleration clause under which any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the seller or holder deems himself to be insecure. This provision shall not affect an acceleration clause authorizing the seller or holder to declare the entire time balance due and payable in case of default in the payment of one or more installment payments, or in event of buyer's failure to pay taxes levied against the vehicle, or in event of buyer's failure to furnish proof of payment of taxes levied against the vehicle, or use of the motor vehicle for illegal purposes.

(B amended Sept. 23, 1961, P.L.1614, No.683)

C. No installment sale contract shall contain any provision authorizing any person acting on behalf of the seller or holder to enter upon premises of the buyer unlawfully, or

to commit any breach of the peace in the repossession of the motor vehicle or collateral security.

D. No installment sale contract shall contain any provision whereby the buyer waives any right of action against the seller, holder, collector-repossessor or other person acting on behalf of the holder for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle or collateral security.

E. No installment sale contract shall contain any provision whereby the buyer executes a power of attorney appointing the seller, the holder, a collector-repossessor or the agent of such licensee as the buyer's agent in collection of the payments under the contract or in repossession of the motor vehicle sold or collateral security. This provision shall not apply to a power of attorney issued by the buyer to an attorney-at-law to be used only in the collection of the obligation by legal process.

F. No installment sale contract shall contain any provision relieving the holder, or other assignee, from liability for any legal remedies which the buyer may have had against the seller under the contract or under any separate instrument executed in connection therewith.

G. No installment sale 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 original seller.

Section 16. Transfer of Installment Sale Contract.

A. The seller of a motor vehicle under an installment sale contract, executed in the Commonwealth of Pennsylvania, shall not sell, transfer or assign the obligation represented by such contract to any person in Pennsylvania, or elsewhere, who is not licensed as a sales finance company pursuant to the provisions of this act.

B. A sales finance company, licensed pursuant to the provisions of this act, shall not sell, transfer or assign the obligation represented by a motor vehicle installment sale contract, executed in the Commonwealth of Pennsylvania, which it has lawfully acquired, to any other person in Pennsylvania, or elsewhere, who is not licensed as a sales finance company pursuant to the provisions of this act.

C. Whenever an installment sale contract is lawfully sold, transferred or assigned to a person who is licensed as a sales finance company, pursuant to the provisions of this act, until the new holder furnishes to the buyer in such contract a written notice of such sale, transfer or assignment that sets forth the name and address of the new holder authorized to receive future payments on such contract, any payment or tender of payment made to and any service of notice on the last known holder by the buyer shall be binding upon any subsequent holder.

D. The provisions of this section shall not apply to an assignment of an aggregation of installment sale contracts, which is executed by a seller or sales finance company only as a security interest securing payment or performance of a bona fide commercial loan, obtained at lawful rates of interest from a person regularly engaged in the business of lending money on the security of such assigned collateral or amounts due pursuant to a security or debt instrument, and under which, in the absence of default or other bona fide breach of the loan contract, ownership of the assigned contracts remains vested in the assignor and collection of payments on such assigned contracts is made by the assignor;

And provided, such assignment and loan contracts are not for the purpose of evading or circumventing the provisions of this act.

E. Whenever an installment sale contract, which has been lawfully acquired by a sales finance company, is in default, the holder may resell, retransfer or reassign such contract to the installment seller from whom such contract was originally acquired. Until the new holder furnishes to the buyer in such contract a written notice of such resale, retransfer or reassignment which sets forth the name and address of the new holder authorized to receive future payments on such contract, and the unpaid time balance and the accrued default charges due under the contract if any, any payment or tender of payment made to and any service of notice on the last known holder by the buyer shall be binding upon any subsequent holder.

(16 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 17. Insurance.

A. The buyer of a motor vehicle under an installment sale contract may be required to provide insurance on such motor vehicle at the buyer's expense for the protection of the seller or subsequent holder. Such insurance shall be limited to insurance against substantial risk of damage, destruction or theft of such motor vehicle: Provided, however, The foregoing shall not interfere with the liberty of contract of the buyer and seller to contract for other or additional insurance as security for or by reason of the obligation of the buyer, and inclusion of charges for such insurance in the principal amount advanced under the installment sale contract. Such insurance shall be written for the dual protection of the buyer and of the seller, or subsequent holder, to the extent of his interest in the motor vehicle. Such insurance shall be for an amount, and period of time, and upon terms and conditions, which are reasonable and appropriate considering the type and condition of the motor vehicle, the amount of the time balance and the schedule of payments in the installment sale contract.

B. The buyer of a motor vehicle under an installment sale contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and selecting an insurance company acceptable to the seller: Provided, however, The inclusion of charges for insurance in the installment sale contract, when the buyer selects the company agent or broker, shall be optional with the seller.

C. Whenever the seller contracts to purchase, at the buyer's expense, such insurance on a motor vehicle sold under an installment sale contract, such insurance shall be purchased through an agent and/or broker, authorized to conduct business in Pennsylvania, and such insurance shall be written by an insurance company qualified to do business in Pennsylvania. The status of the buyer and seller or holder, as set forth in such insurance contract, shall conform to the status of these parties in the installment sale contract. The charges for insurance to the buyer shall not be in excess of the charges for insurance which others are required to pay to such insurance company for similar coverage, and in no event in excess of any limitations on premiums, commissions and other charges established by authority of the Commonwealth of Pennsylvania.

D. Whenever the seller contracts to purchase, at the buyer's expense, such insurance on a motor vehicle sold under an installment sale contract, a copy of the policy or a

certificate of insurance shall be delivered to the buyer within thirty (30) days of the date of the buyer's signing of the installment sale contract.

E. The insurance policy which is furnished to the buyer when the insurance is placed by the seller, or subsequent holder, at the buyer's expense shall set forth complete information as to the effective dates, amounts of premiums and coverage, and shall contain all the terms of the insurance contract. When a certificate of insurance issued under a master policy is furnished to the buyer in lieu of an individual policy, such certificate shall set forth all information as to effective dates, amounts of premiums and coverage, and shall contain all the terms of the insurance contract embodied in the master policy to the same extent as would appear if an individual policy were issued, and shall give due notice that it is not an insurance policy.

F. When the seller or subsequent holder has placed, at the expense of the buyer, insurance on a motor vehicle sold under an installment sale contract and the buyer prepays the time balance under the contract prior to the expiration date of the insurance, such insurance shall remain in force unless the buyer requests cancellation thereof. The seller or holder shall not cancel the insurance under such circumstances without the buyer's consent, nor shall the seller or holder coerce the buyer to cancel the insurance. Unexpired insurance premiums received by the seller or holder, resulting from cancellation of insurance which was originally placed at the buyer's expense, shall be paid to the buyer or credited to any matured unpaid installments under the contract.

G. When the seller contracts to purchase insurance at the buyer's expense and such insurance is cancelled by the insurance company prior to expiration, the seller or subsequent holder shall place comparable insurance with another insurance company and furnish the buyer with a copy of the insurance policy, subject to the same requirements of this act applicable to the original policy. In the event the holder is unable to obtain such insurance in another insurance company, he shall immediately notify the buyer, who may then obtain such insurance from an insurance company, agent or broker of his own selection and the holder shall be liable for any additional charges for insurance incurred by the buyer in rewriting such insurance for the unexpired period for which the original insurance was written. The holder under these circumstances shall also be liable to the buyer for any loss suffered by the buyer through negligence on the part of the holder in promptly advising the buyer of his inability to obtain replacement insurance.

(17 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 18. Other Costs Included in Amount Financed.

A. In addition to charges for insurance authorized in the preceding section of this act, the seller of a motor vehicle under an installment sale contract may require the buyer to pay certain other costs incurred in the sale of a motor vehicle under such contract as follows:

1. Fees, payable to the Commonwealth of Pennsylvania, for filing a lien or encumbrance on the certificate of title to a motor vehicle sold under an installment sale contract or collateral security thereto.

2. Fees, payable to a public official, for filing or recording and satisfying or releasing the installment sale contract or instruments securing the buyer's obligation.

3. Fees, for notarization required in connection with the filing and recording or satisfying and releasing a mortgage, judgment lien or encumbrance.

B. The seller of a motor vehicle under an installment sale contract may also contract with the buyer to pay on behalf of the buyer, such other costs incidental to the sale of a motor vehicle and contracted for voluntarily by the buyer as follows:

1. Fees, payable to the Commonwealth of Pennsylvania, for registration of the motor vehicle and issuance or transfer of registration plates.

2. Fees, payable to the Commonwealth of Pennsylvania, for driver's license for the buyer.

3. Costs of messenger service and other costs associated with the submission of documents to the Commonwealth of Pennsylvania or other governmental entity which are contracted for voluntarily by the buyer.

C. The costs described in subsections A and B may be contracted for, collected or received by the seller from the buyer independently of the installment sale contract, or the seller may extend credit to the buyer for the amount of such costs and include such amount in the principal amount financed under the installment sale contract.

D. Unless otherwise permitted by the laws of this Commonwealth other than this act, the costs described in subsections A and B which are paid or payable by the buyer shall not exceed the amount which the seller expends or intends to expend therefor. Any such costs which the seller has collected from the buyer, or which have been included in the buyer's obligation under the installment sale contract which are not disbursed by the seller, as contemplated, shall be immediately refunded or credited to the buyer.

E. The seller of a motor vehicle under an installment sale contract may also contract with the buyer, to pay on behalf of the buyer, charges for any goods or services necessary or incidental to the sale of a motor vehicle and contracted for by the buyer which are not in violation of clause 14 of subsection A of section 10 and which are not otherwise restricted pursuant to this act or any other statute. This subsection does not authorize the mark-up of costs described in subsection A or B.

(18 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 19. Finance Charges.

A. A seller licensed under the provisions of this act shall have the power and authority to charge, contract for, receive or collect a finance charge, as defined in this act, on any installment sale contract covering the retail sale of a motor vehicle in this Commonwealth, which shall not exceed the rates indicated for the respective classification of motor vehicles as follows:

Class I. New motor vehicles, except those having a cash price of ten thousand dollars (\$10,000) or more and used primarily for commercial purposes and except mobile homes and except new trucks or truck tractors having a manufacturer's gross vehicular weight of fifteen thousand (15,000) pounds or more and new semitrailers or trailers designed for use in combination with truck tractors, eighteen percent (18%) simple interest per year on the unpaid balance.

Class II. Used motor vehicles of a model designated by the manufacturer by a year not more than two (2) years prior to the year in which the sale is made, eighteen percent (18%) simple interest per year on the unpaid balance.

Class III. Older used motor vehicles of a model designated by the manufacturer by a year more than two (2) years prior to the year in which the sale is made, twenty-one percent (21%) simple interest per year on the unpaid balance.

Class IV. New motor vehicles having a cash price of ten thousand dollars (\$10,000) or more and used primarily for commercial purposes, and except new trucks or truck tractors having a manufacturer's gross vehicular weight of fifteen thousand (15,000) pounds or more and new semitrailers or trailers designed for use in combination with truck tractors, seven and one-half percent (7 1/2%) per year.

Class V. New mobile homes, such percent established as a maximum finance charge for mobile homes by regulation of the Federal Housing Administration, pursuant to the National Housing Act of June 27, 1934 (48 Stat. 1246), whether or not the mobile home is subject to a sale on credit or loan insured or guaranteed in whole or in part by such administration.

Class VI. New trucks and truck tractors having a manufacturer's gross vehicular weight of fifteen thousand (15,000) pounds or more and new semitrailers and trailers designed for use in combination with truck tractors, ten percent (10%) per year.

B. Such finance charge shall be computed on the principal amount financed as determined under Section 14-B-6 of this act.

C. Such finance charge shall be computed at the annual rate indicated on contracts, which are payable by installment payments, extending for a period of one (1) year. On contracts providing for installment payments, extending for a period which is less than or greater than one (1) year, the finance charge shall be computed proportionately.

D. Such finance charge may be computed on the basis of a full month for any fractional month period in excess of ten (10) days, and interest may continue to be charged during any period of time for which a default charge is also imposed.

E. A minimum finance charge of ten dollars (\$10.00) may be charged on any installment sale contract in which the finance charge, when computed at the rates indicated, results in a total charge of less than this amount.

F. The maximum finance charge prescribed by this act shall not apply to any sale on credit or loan insured or guaranteed in whole or in part by the Federal Housing Administration, the Veterans' Administration or any other department or agency of the United States Government: Provided, That any such sale on credit or loan is subject to a maximum rate of interest established by law or by such department or agency.

(19 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 20. Refinancing Installment Sale Contract.

A. The holder of an installment sale contract may extend the scheduled due date, or defer the scheduled payment of all or part of any unpaid installment payment or payments, or renew the unpaid time balance of such contract.

B. The holder may contract for, receive and collect a refinance charge for such extension, deferment or renewal. Such refinance charge shall not exceed the amount

ascertained under either of the following methods of computation at the respective rates indicated by--

Option 1. Computing the refinance charge on the amount of the installment payment or payments or part thereof, which is refinanced for the period of time, for which each payment or part thereof is extended or deferred at the following rates on contracts originally in the respective classification of motor vehicles set forth in the preceding section of this act:

Class I. One percent (1%) per month.

Class II. One and one-half percent (1 1/2%) per month.

Class III. Two percent (2%) per month.

Such refinance charges may be computed on the basis of a full month for any fractional month period in excess of ten (10) days.

Option 2. Computing the refinance charge on the amount obtained by adding to the unpaid time balance of the contract, charges for insurance and other charges incidental to refinancing, by adding unpaid default charges, which may be accrued, and by deducting any rebate which may be due to the buyer for prepayment incidental to refinancing, at the rate of the finance charge in the original contract, for the term of the renewal contract, and subject to the provisions of this act governing computation of the original finance charge: Provided, however, That the provisions of this act governing minimum finance charges and minimum prepayment rebate shall not apply in calculating refinance charges on the contract renewed under this method of computation.

C. The holder of an installment sale contract shall not include in any contract for refinancing such contract, any cash loan to the buyer, nor any credit extended to the buyer incidental to the purchase of goods or services: Provided, further, That the word loan herein shall not include, nor this act prohibit, a rearrangement of payments under the installment sale contract by a refinance transaction involving a restoration of certain installment payments made under the contract, but the refinance charge on such amount restored may be not more than six percent per annum, simple interest; And provided, further, however, That the holder of such contract may embody in such refinance contract the charge for accessories, equipment and parts for the motor vehicle sold under such contract, and the charge for repairs and services to such motor vehicle including finance charges thereon.

(20 amended Dec. 9, 2002, P.L.1446, No.186)

Section 21. Default Charges.--

A default charge may be collected on any installment payment or payments which are not paid on or before the due date of such payments. A default charge may be collected on any contract subject to this act, regardless of the class of vehicle as defined in section 19 or the method by which the finance charge is computed. Such default charge shall not exceed the rate of two percent (2%) per month on the amount of the payment or payments in arrears where the contract is for the sale of a motor vehicle which is other than a heavy commercial motor vehicle. Such default charge may be computed on the basis of a full calendar month for any fractional month period in excess of ten (10) days. On any contract for the sale of a heavy commercial motor vehicle, the default charge shall not exceed for any payment not made within ten (10) days of its scheduled due date, four

percent (4%) of the amount of the payment or payments in arrears: Provided, That such default charge may be collected only once on each payment in arrears. Such default charges may be collected, when earned, during the term of the contract, or may be accumulated and collected at final maturity, or at the time of final payment under the contract. Such default charge shall not be collected on any payment in default because of any acceleration provision in the contract.

(21 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 21.1. (21.1 repealed Dec. 17, 1982, P.L.1389, No.318)

Section 22. Refund for Prepayment of Contract.

A. The buyer, notwithstanding the provisions of any installment sale contract, shall have the privilege of prepaying at any time all or any part of the unpaid time balance under an installment sale contract.

B. Whenever all of the time balance is liquidated prior to maturity by prepayment, refinancing or termination by surrender or repossession and re-sale of the motor vehicle, the holder of the installment sale contract shall rebate to the buyer immediately the unearned portion of the finance charge. Rebate may be made in cash or credited to the amount due on the obligation of the buyer.

C. The unearned finance charge to be rebated to the buyer shall represent at least as great a proportion of the total finance charge as the sum of the periodical time balances after the date of prepayment bears to the sum of all the periodical time balances under the schedule of payments in the original agreement: Provided, however, The holder shall not be required to rebate any portion of such unearned finance charge which results in a net minimum finance charge on the contract less than ten dollars (\$10.00); And provided further, the holder shall not be required to rebate any unearned finance charge when the amount due, computed as herein set forth, is less than one dollar (\$1.00).

(C amended May 2, 1949, P.L.812, No.211)

Section 23. Repossession.

A. When the buyer shall be in default in the payment of any amount due under a motor vehicle installment sale contract or when the buyer has committed any other breach of contract, which is by the contract specifically made a ground for retaking the motor vehicle, the seller or any holder, who has lawfully acquired such contract, may retake possession thereof. Unless the motor vehicle can be retaken without breach of the peace, it shall be retaken by legal process, but nothing herein shall be construed to authorize a violation of the criminal law.

B. Repossession of a motor vehicle when effected by legal process shall be made only by a duly constituted public official. Repossession when effected otherwise than by legal process shall be made only by the holder, including an official or full time employe thereof, by a collector-repossessor licensed under this act, by the person, who originally sold such motor vehicle to the buyer under the installment sale contract, or by any licensed seller or sales finance company, including an official and full time employe

thereof, who is not regularly engaged in the business of making such repossessions but occasionally does so as an accommodation for other sellers or finance companies.

C. When replevin and sale of the motor vehicle sold under an installment sale contract, or of the collateral security thereto, is effected by legal process, such proceedings may be commenced by the holder immediately upon any default or breach of contract by the buyer. In a proceeding under these conditions the buyer shall receive such notices, shall have such rights, shall be liable for such costs of suit and reasonable attorney's fees as provided by the laws governing such legal proceedings.

D. When repossession of a motor vehicle, which is the subject of an installment sale contract, is effected otherwise than by legal process, the holder shall immediately furnish the buyer with a written "notice of repossession" delivered in person, or sent by registered or certified mail directed to the last known address of the buyer. Such notice shall set forth the buyer's right as to reinstatement of the contract, if the holder extends the privilege of reinstatement and redemption of the motor vehicle, shall contain an itemized statement of the total amount required to redeem the motor vehicle by reinstatement or payment of the contract in full, shall give notice to the buyer of the holder's intent to re-sell the motor vehicle at the expiration of fifteen (15) days from the date of mailing such notice, shall disclose the place at which the motor vehicle is stored, and shall designate the name and address of the person to whom the buyer shall make payment, or upon whom he may serve notice. The holder's notice shall also state that any personal property left in the repossessed vehicle will be held for thirty (30) days from the date of the notice's mailing. The personal property may be reclaimed within the thirty (30) day time period. Thereafter, the property may be disposed of in the same manner as the motor vehicle and other collateral.

(D amended Dec. 9, 2002, P.L.1446, No.186)

E. When repossession of a motor vehicle which is the subject of an installment sale contract is effected, otherwise than by legal process, the buyer shall be liable for costs incurred by the holder in retaking, storing and repairing such motor vehicle only when all of the following conditions prevail:

1. When default exceeds fifteen (15) days at the time of repossession, and
2. When such costs represent actual, necessary and reasonable expenses incurred by the holder in retaking, storing and repairing the motor vehicle, excluding any costs incurred in retaking which are charges for services of persons who are regular full time employees of the holder, and
3. When such costs are supported by receipts or other satisfactory evidence of payment, and records of the holder show detailed information as to nature of each item of expense, the amount thereof, the date of payment, and to whom paid.

F. The department shall have authority to reduce the amount of or prohibit entirely any item of expense of retaking, storing or repairing of a motor vehicle which appears to him to be fictitious, unnecessary, unreasonable or exorbitant, or such as would not have been incurred by a prudent person under similar circumstances.

(F amended Dec. 9, 2002, P.L.1446, No.186)

G.

1. Before any holder may accelerate the maturity of any installment sale contract for a mobile home, commence any legal action to recover under such obligation, or take possession of any security of the installment buyer for such contract, such person

shall give the installment buyer notice of such intention at least thirty (30) days in advance as provided in this subsection. Notice of intention to take action as specified in this subsection shall be in writing, and sent to the installment buyer by registered or certified mail at the address where the mobile home is located. The written notice shall clearly and conspicuously state:

- (a) the particular obligation or security interest;
- (b) the nature of the default claimed;
- (c) the right of the installment buyer to cure the default as provided in this subsection and exactly what performance including what sum of money, if any, must be tendered to cure the default;
- (d) that the installment buyer may cure the default at any time before title to the mobile home is lawfully transferred from the installment buyer which shall be at least forty-five (45) days after receipt of the notice; and
- (e) the method or methods by which the installment buyer's ownership or possession of the mobile home may be terminated.

2. The notice of intention to accelerate, commence legal action or repossess provided in this subsection shall not be required where the installment buyer has abandoned or voluntarily surrendered the property which is the subject of the mobile home installment sale.

3. Notwithstanding the provisions of any other law, after a notice of intention to accelerate, commence legal action or repossess has been given pursuant to paragraph 1, at any time before title to the mobile home is lawfully transferred from the installment buyer for default upon a mobile home installment sales contract, the installment buyer or any one in his behalf, not more than three (3) times in any calendar year, may cure his default and prevent sale or other disposition of the mobile home and avoid acceleration, if any, by tendering the amount or performance specified in this paragraph. To cure a default under this subsection, an installment buyer shall:

- (a) Pay or tender in the form of cash, cashier's check or certified check, all sums which would have been due at the time of payment or tender in the absence of default and the exercise of an acceleration clause, if any.
- (b) Perform any other obligation which he would have been bound to perform in the absence of default or the exercise of an acceleration clause, if any.
- (c) Pay or tender any reasonable fees allowed under paragraph 6 and the reasonable costs of proceeding to commence legal action as specified in writing by the holder actually incurred to the date of payment.
- (d) Pay any reasonable late penalty, if provided for in the security document.
- (e) Pay the costs which are reasonable and actually incurred by the holder for detaching and transporting the mobile home to the site of the sale.

4. Cure of a default in the payment of a mobile home contract pursuant to this subsection restores the installment buyer to the same position as if the default had not occurred.

5. Mobile home installment contracts contracted for on or after the effective date of this amendatory act may be prepaid without any penalty or other charge for such prepayment at any time before the end of the period of the loan.

6. With regard to mobile home installment contracts, no holder shall contract for or receive attorneys' fees from an installment buyer except as follows:

(a) Upon commencement of legal action with respect to a mobile home installment contract, attorneys' fees which are reasonable and actually incurred by the holder may be charged to the installment buyer.

(b) Prior to commencement of legal action attorneys' fees which are reasonable and actually incurred not in excess of fifty dollars (\$50) provided that no attorneys' fees may be charged for legal expenses incurred prior to the thirty-day notice provided in paragraph 1.

7. Notwithstanding any other law, the provisions of this subsection may not be waived by any oral or written agreement executed by any person.

(G added July 1, 1978, P.L.725, No.130)

H. The reposessor of any motor vehicle shall give notice within twenty-four (24) hours after the repossession to the local municipal police department having jurisdiction of the area where the vehicle was located at the time of repossession or, where there is no municipal police jurisdiction, to the Pennsylvania State Police.

(H added Oct. 16, 1996, P.L.704, No.122)

Section 24. Reinstatement of Contract After Repossession.

A. Whenever a motor vehicle, sold under an installment sale contract, has been replevined by legal process, or repossessed otherwise than by legal process, because of default or other breach of contract, the holder may reinstate the contract and return the motor vehicle to the buyer provided the buyer pays all past due installments, or agrees with holder on mutually satisfactory arrangements, accrued default charges, costs of suit under the contract and authorized by this act in replevin by legal process, and if default at the time of repossession exceed fifteen (15) days, expenses of retaking, repairing and storage authorized by this act.

B. When a contract is reinstated after repossession, the holder may, contemporaneous therewith or subsequently thereto, enter into a contract with the buyer for refinancing the obligation as provided in this act.

Section 25. Redemption and Termination of Contract after Repossession.

A. Unless the right of redemption is waived in a nonconsumer transaction under 13 Pa.C.S. § 9624(c) (relating to waiver), if repossession of a motor vehicle which is the subject of an installment sale contract is effected within or outside the Commonwealth of Pennsylvania otherwise than by legal process, the holder shall retain such repossessed motor vehicle for a period of fifteen (15) days after mailing of notice of repossession to the buyer.

B. During such fifteen (15) day period the buyer may redeem the motor vehicle and terminate the contract by payment or tender of payment to the holder of the following amounts, subject to the conditions hereinafter indicated:

1. When default at the time of repossession was less than fifteen (15) days, the amount of the unpaid time balance, plus the amount of any accrued default charges authorized by this act, plus any other amount lawfully due under the contract, excluding costs of retaking, repairing and storage, less rebate of unearned finance charge.

2. When default at the time of repossession exceeded fifteen (15) days, the amount of the unpaid time balance, plus the amount of any accrued default charges authorized by this act, plus costs of retaking, repairing, repossessing and storing authorized by this act, plus any other amount lawfully due under the contract, less rebate of unearned finance charge.

C. If the buyer redeems the motor vehicle and terminates the contract by payment or tender as provided in subsection B, the holder shall return the motor vehicle and any other collateral in any manner consistent with 13 Pa.C.S. § 9623 (relating to right to redeem collateral). Property will be deemed to be returned in a manner in compliance with this act and 13 Pa.C.S. § 9623 by delivery to one of the following sites designated by the buyer:

1. the county in this Commonwealth or within a comparable governmental unit outside this Commonwealth where repossession occurred;
2. a county in this Commonwealth where the buyer resides; or
3. the county in this Commonwealth in which the vehicle was purchased under such contract.

D. Upon receipt of the funds necessary to redeem the motor vehicle as provided in subsection B, the holder shall return the repossessed motor vehicle as soon as is reasonably possible, but not later than ten (10) business days from the receipt of the funds.

(25 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 26. Sale of Motor Vehicle after Repossession.

A. When the repossessed motor vehicle under an installment sale contract is not redeemed by the buyer either by termination or reinstatement of the contract within the fifteen (15) day notice of redemption period, the buyer shall forfeit all claim to such motor vehicle and collateral security.

B. If the buyer does not redeem the repossessed motor vehicle within the said fifteen (15) day notice of redemption period, then the seller or holder shall not have the right to bring an action or proceeding against the buyer for a deficiency, as provided in section twenty-seven hereof, unless there shall have been a public or private sale of the repossessed motor vehicle and collateral security.

(B added May 2, 1949, P.L.812, No.211)

Section 27. Deficiency Judgment.

If the proceeds of the resale mentioned in section twenty-six above are not sufficient to defray the expenses thereof, the expenses of retaking and storing the motor vehicle to which the seller or holder may be entitled and the net balance due upon the contract, plus the amount of any accrued default charges authorized by this act, the seller or holder may recover the deficiency from the buyer or from any one who has succeeded to the obligations of the buyer: Provided, That the buyer may have the reasonable value of the motor vehicle at the time of resale, determined in any action or proceeding brought by the seller or holder to recover the deficiency, the resale price being prima facie, but not conclusive evidence, of such reasonable value and the said reasonable value, as

determined, or the resale price, whichever shall be higher, shall be credited to the buyer on account of his indebtedness. In every action or proceeding for a deficiency the buyer may have the reasonableness of the expense of retaking and storing the motor vehicle determined. Nothing contained in this section shall apply to a deficiency on a resale which was held prior to the effective date of this act.
(27 amended May 2, 1949, P.L.812, No.211)

Section 28. Statement of Account to Buyer.

A. At any time after execution of an installment sale contract and within one year after termination of such contract, the holder of such contract shall furnish the buyer, upon request, with a complete and detailed statement of account showing:

1. All amounts paid by the buyer on account of the obligation, dates of payment and the allocation of such payments to reduction of the time balance, refinance charges, default charges, court costs, attorney's fees, expenses of retaking, repairing, storing, or otherwise.

2. All amounts credited to the buyer as rebates for prepayment and unexpired premiums on insurance cancelled.

3. The amount of the installment payments, accrued charges and expenses incurred, if any, which are due and payable.

4. The number and amount of installment payments to become due and payable, if any, and the due dates thereof.

B. The buyer shall be furnished with one such statement of account without charge during the term of the contract or within one year after termination, and the holder may require payment of a fee of fifty cents (\$.50) for any additional statements.

C. The holder shall furnish the buyer, upon request and upon payment of a fee of fifty cents (\$.50), with a duplicate copy of the installment sale contract to replace the buyer's copy of such contract which is required to be furnished to the buyer without charge at the time of execution of the contract.

Section 29. Payment Receipts.

A. Whenever payment is made on account of any installment sale contract, the person receiving such payment shall, at the time of receiving such payment, furnish to the buyer or to the person making the payment on behalf of the buyer, a complete written receipt therefor, if requested, or payment is made in cash.

B. Such receipt shall show the date of payment, the amount of the payment, the nature of the payment, shall identify the obligation to which such payment is applicable, and shall be signed or initialed by the person receiving the payment on behalf of the holder.

C. When issued for payments made at the designated licensed office of the holder or mailed to such office, which payments are applied to reduction of the time balance, such receipt shall, if requested by the buyer, also set forth the unpaid time balance remaining due after crediting such payment. If such payment includes default charges, authorized by this act, the amount of such default charges shall be set forth on the receipt independently of the payment applied to reduction of the time balance.

D. When the buyer elects to make payments by mail, the holder may require the buyer to supply a self-addressed stamped envelope as a condition for mailing such receipt to him, if he has been previously notified of such condition.

Section 30. Executed Contracts; Release of Liens.

A. Upon payment in full of the time balance and other amounts lawfully due under an installment sale contract the holder shall:

1. Return to the buyer all instruments evidencing indebtedness or constituting security under an installment sale contract, which were signed by the buyer or his sureties or guarantors in conjunction with such contract, excepting such instruments as are filed or recorded with a public official and retained in the files of such official, and

2. Release all security interest in the motor vehicle or in collateral security to the obligation of the buyer under such contract, and

3. Deliver to the buyer such good and sufficient assignments and documents of title as may be necessary to vest the buyer with complete evidence of title.

B. When the final payment on an installment sale contract is made in cash, money order or equivalent tender by the buyer, or his authorized representative, at the designated licensed office of the holder, the certificate of title, showing satisfaction of this encumbrance, shall be delivered at the time of such tender of payment, if demanded by the buyer, otherwise delivery may be made at a later date in person or by mail as may be arranged between buyer and holder, all other instruments shall be delivered or mailed to the buyer within fifteen (15) days of the date of final payment.

Section 31. Prohibited Charges.

A. A licensee under this act shall not charge, contract for, collect, or receive from the buyer, directly or indirectly, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other thing of value in connection with the retail sale of a motor vehicle under an installment sale contract in excess of charges for insurance, other charges necessary or incidental to the sale of the motor vehicle, the finance charges, refinance charges, default charges, recording and satisfaction fees, court costs, attorney's fees and expenses of retaking, repairing and storing a repossessed motor vehicle which are disclosed as required by subsection B of section 14.

B. A licensee under this act shall not collect any charge whatsoever in connection with a contemplated sale of a motor vehicle under an installment sale contract, if such contract is not consummated: Provided, however, That nothing contained herein shall affect the legal status of a deposit paid by a prospective buyer to a seller as a binder on the contemplated purchase of a motor vehicle.

C. An installment sale contract, wherein the seller or any subsequent holder has charged, contracted for, collected, or received from the buyer any prohibited charges whatsoever shall be unenforcible as to such prohibited charges.

(31 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 32. Buyer's Waiver of Statutory Protection.

No act, agreement or statement of any buyer in any installment sale contract shall constitute a valid waiver of any provision of this act intended by the Legislature for the benefit or protection of retail installment buyers of motor vehicles.

Section 33. Application of Act to Existing Contracts.

The provisions of this act shall not apply to or affect the validity of any 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 34. Effect of Expiration, Surrender or Revocation of License of Existing Contracts.

A. The expiration, surrender or revocation of a license, issued pursuant to this act, to a seller or sales finance company shall not impair or affect the obligation of any motor vehicle installment sale contract entered into lawfully or lawfully acquired by such licensee prior to the effective date of such expiration, surrender or revocation of license: Provided, however, the holder of such contracts shall forfeit the right to charge, contract for, receive or collect refinance charges authorized by this act for renewal of a contract, if the license of such holder expired, was surrendered, or was revoked prior to the date of such renewal.

B. A licensee whose license has expired, was surrendered or was revoked may thereafter sell, transfer or assign contracts entered into or acquired prior thereto to any licensed sales finance company, and such sales finance company acquiring such contracts may renew such contracts in accordance with the provisions of this act.

C. A licensee whose license has expired, was surrendered or was revoked shall not thereafter enter into new contracts for the retail sale of motor vehicles under installment sale contracts, and shall not thereafter discount, purchase or otherwise acquire such contracts.

Section 35. Contracts Unenforcible in Pennsylvania.

A. No obligation of the buyer of a motor vehicle under an installment sale contract which was consummated within the Commonwealth of Pennsylvania shall be enforcible in the Commonwealth of Pennsylvania, wherein the seller was not licensed, as required under the provisions of this act, at the time such seller entered into such installment sale contract, or wherein the holder was not licensed under the provisions of this act at the time he acquired such contract. The buyer under such contract shall be entitled to cancellation of the contract, release of all liens against the motor vehicle sold under such contract and against any collateral security owned by the buyer or his sureties and guarantors, upon payment or tender of payment to the holder of the principal amount financed as set forth in the contract, less all payments on account of such obligation exclusive of down payment which had been made prior thereto.

B. Nothing in this section shall be construed to prevent the enforcement in the Commonwealth of Pennsylvania of an obligation arising from the sale of a motor vehicle made outside of the Commonwealth of Pennsylvania under an installment sale contract and entered into or executed by the buyer outside of the Commonwealth of Pennsylvania,

whether or not such buyer was a resident of this Commonwealth at the time he entered into such contract.

Section 36. Exemptions.

A. This act shall not affect or impair any business conducted lawfully under license issued pursuant to the act of April eighth, one thousand nine hundred thirty-seven (Pamphlet Laws, two hundred sixty-two), known as the "Consumer Discount Company Act," or supplements or amendments thereto.

B. This act shall not apply to an extension of credit for the purchase of a motor vehicle, including the financing of any other costs or charges necessary or incidental to the sale or financing of a motor vehicle, made pursuant to the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965."
(36 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 37. Penalties.

A. Any person, partner, association, business corporation, banking institution, nonprofit corporation, common law trust, joint stock company or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employe, agent, broker or representative thereof who or which shall engage in this Commonwealth in business as installment seller, sales finance company or collector-repossessor as defined in this act without having obtained a license, as required under this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than two thousand dollars (\$2,000), or more than ten thousand dollars (\$10,000), or to suffer imprisonment of not more than three (3) years, or both, at the discretion of the court.

B. Any licensee conducting business under this act as an installment seller, sales finance company or collector-repossessor or any owner, partner, member, officer, director, trustee, employe, agent, broker or representative thereof who shall violate any provision of this act, or shall direct such violation shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than two thousand dollars (\$2,000) for the first offense; and for each subsequent offense a like fine and/or suffer imprisonment not to exceed one (1) year in the discretion of the court.

C. Any licensed seller or sales finance company as holder of a motor vehicle installment sale contract who hires, authorizes or permits an unlicensed collector-repossessor, as defined in this act, to collect payments on any such contract or to repossess any motor vehicle sold under such contract within this Commonwealth shall be guilty of a violation of this act, and subject to the penalties imposed by the foregoing provisions of this section.

D. Any person required to be licensed under this act that violates this act or directs a violation or who engages in any activity for which a license could be suspended or revoked under section 10 shall be subject to a civil penalty levied by the department of not more than two thousand dollars (\$2,000) for each offense.

E. A sales finance company licensed pursuant to this act engaged in the purchase, sale, assignment, securitization or servicing of installment sale contracts shall not be held

liable under this act for excessive mark-ups by installment sellers to charges described in subsection E of section 18 or for failures to make disclosures in subsection G of section 13.

(37 amended Dec. 9, 2002, P.L.1446, No.186)

Compiler's Note: See section 22 of Act 186 of 2002 in the appendix to this act for special provisions relating to applicability.

Section 37.1. Regulations and Orders.

The department is authorized to promulgate regulations and to issue orders, statements of policy and written interpretations as necessary or appropriate for the interpretation or enforcement of this act.

(37.1 added Dec. 9, 2002, P.L.1446, No.186)

Section 38. Repealer.

All acts or parts of acts which are inconsistent herewith are hereby repealed.

Section 39. Effective Dates.

The provisions of this act requiring a license for sellers, sales finance companies and collector-repossessors shall become effective on the first day of October, one thousand nine hundred and forty-seven; all other provisions of this act shall become effective sixty (60) days after final enactment of this act.

APPENDIX

Supplementary Provisions of Amendatory Statutes

2002, DECEMBER 9, P.L.1446, NO.186

Section 19.

The General Assembly finds and declares as follows:

(1) All citizens are entitled to fair dealing with those who sell and finance motor vehicles in this Commonwealth. The act became law in 1947, and its purpose is to protect Pennsylvania's consumers from improper sales and financing practices.

(2) Because citizens can now choose to purchase products and services related to the purchase of a motor vehicle which were not available or even contemplated when the act was enacted, and include those items in the amount financed, it is now desirable to amend the act to provide for additional disclosures to consumers who purchase incidental items in conjunction with the purchase of a motor vehicle.

(3) It is further desirable to amend the act to provide for the imposition of civil penalties against those sellers and lenders that engage in fraudulent or abusive practices to the detriment of consumers in this Commonwealth.

(4) Uncertainty has arisen with regard to the intent of certain provisions of the act as enacted in 1947. In order to provide for continued consumer protection and financing

options, this act is intended to clarify the intent of the act to facilitate the financing of vehicles and related products and services.

Section 20.

Because many of the circumstances and events that led to the initial adoption of the act in 1947 have substantially changed due to substantial improvements in business practices and expanded Federal regulations, a study of proposals to update and modernize the act shall be conducted by the Joint State Government Commission and the recommendations of the commission reported to the General Assembly. In addition to changes to the act, the commission shall also consider the advisability of merging the provisions of the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act, and other consumer finance legislation into a consolidated Consumer Credit Code which avoids duplication of Federal law and regulations and promotes uniformity of law among the states. The study shall be conducted by a task force established by the commission consisting of four members of the Senate, two appointed by the President pro tempore of the Senate and two appointed by the Minority Leader of the Senate and four members of the House of Representatives, two appointed by the Speaker of the House of Representatives and two appointed by the Minority Leader of the House of Representatives. In addition, the commission shall appoint an advisory committee to assist the task force that shall include a representative of the Department of Banking, the Consumer Protection Division of the Office of Attorney General, the Pennsylvania Automotive Association, the Pennsylvania Retailers' Association, the Pennsylvania Bankers Association and other individuals with knowledge and expertise regarding motor vehicle sales finance, installment sales and consumer protection laws and regulations and a member of the public.

Section 22. The following apply:

(1) This act shall not adversely affect the adequacy of actions taken to comply with this act prior to the effective date of this act, including disclosures provided prior to the effective date of this act.

(2) The following provisions are intended to clarify and confirm the meaning of the act and not to change the meaning or interpretation of the act:

(i) The amendment or addition of clauses 13, 13.1, 13.2, 14 and 16 of section 3 of the act.

(ii) The amendment or addition of provisions of the act which utilize the definitions referred to in subparagraph (i).

(iii) The amendment of sections 16, 17 and 18 of the act.

(iv) The amendment of subsection D of section 19 of the act.

(v) The amendment of sections 21, 25 and 31 of the act.

(vi) The addition of subsection B of section 36 of the act.

(vii) The addition of subsection E of section 37 of the act.

(3) To the extent necessary to clarify the meaning or interpretation of the act, the provisions referred to in paragraph (2) shall apply retroactively to causes of action which arose on or before the effective date of this act.

(4) As to the amendment of section 14 of the act:

(i) The amendment of section 14 of the act constitutes a clarification and confirmation of the meaning of the act in accordance with paragraph (2) to the extent that the amendment:

(A) provides that amounts disclosed under clauses 1 and 5 of subsection B of section 14 of the act may include charges and are not limited to actual costs incurred by a seller or finance company, except as otherwise provided by section 18 of the act and clause 13.2 of section 3 of the act; and

(B) allows the disclosure of charges for service contracts and warranties at the option of the seller or sales finance company as either:

(I) part of the cash price under clause 1 of subsection B of section 14 of the act; or

(II) other charges necessary or incidental to the sale of a motor vehicle under clause 5 of subsection B of section 14 of the act.

(ii) The amendment of section 14 of the act constitutes a change in the law to the extent that the amendment imposes new disclosure requirements.