

SECOND REGULAR SESSION

HOUSE BILL NO. 2492

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FISHEL.

5333H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 364.030, 364.040, 365.020, 365.040, 365.070, 365.080, 365.100, 365.125, and 365.140, RSMo, and to enact in lieu thereof nine new sections relating to financial regulations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 364.030, 364.040, 365.020, 365.040, 365.070, 365.080, 365.100, 2 365.125, and 365.140, RSMo, are repealed and nine new sections enacted in lieu thereof, to be 3 known as sections 364.030, 364.036, 364.040, 365.020, 365.040, 365.070, 365.080, 365.100, 4 and 365.140, to read as follows:

364.030. 1. No person shall engage in the business of a financing institution in this state 2 without a license therefor as provided in this chapter; except, however, that no bank, trust 3 company, loan and investment company, licensed sales finance company, registrant under the 4 provisions of sections 367.100 to 367.200, or person who makes only ~~occasional~~ **isolated** 5 **originations or** purchases of retail time contracts or accounts under retail charge agreements 6 ~~[and which purchases are not being made in the course of repeated or successive purchase of~~ 7 ~~retail installment contracts from the same seller,]~~ shall be required to obtain a license under this 8 chapter but shall comply with all the laws of this state applicable to the conduct and operation 9 of a financing institution.

10 2. The application for the license shall be in writing, under oath and in the form 11 prescribed by the director. The application shall contain the name of the applicant; date of 12 incorporation, if incorporated; the address where the business is or is to be conducted and similar 13 information as to any branch office of the applicant; the name and resident address of the owner

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 or partners or, if a corporation or association, of the directors, trustees and principal officers, and
15 other pertinent information as the director may require.

16 3. The license fee for each calendar year or part thereof shall be the sum of five hundred
17 dollars for each place of business of the licensee in this state which shall be paid into the general
18 revenue fund. The director may establish a biennial licensing arrangement but in no case shall
19 the fees be payable for more than one year at a time.

20 4. Each license shall specify the location of the office or branch and must be
21 conspicuously displayed therein. In case the location is changed, the director shall either endorse
22 the change of location of the license or mail the licensee a certificate to that effect, without
23 charge.

24 5. Upon the filing of an application, and the payment of the fee, the director shall issue
25 a license to the applicant to engage in the business of a financing institution under and in
26 accordance with the provisions of this chapter for a period which shall expire the last day of
27 December next following the date of its issuance. The license shall not be transferable or
28 assignable. No licensee shall transact any business provided for by this chapter under any other
29 name.

**364.036. Notwithstanding any provisions of law to the contrary, if a contract so
2 provides, the holder thereof may charge, finance, and collect:**

3 **(1) A charge for late payment on each installment or minimum payment in default**
4 **for a period of no less than fifteen days in an amount not to exceed the least of:**

5 **(a) Five percent of each installment due;**

6 **(b) The minimum payment due; or**

7 **(c) Twenty-five dollars.**

8
9 **However, if the least amount is below ten dollars, a minimum charge of ten dollars may be**
10 **made; and**

11 **(2) A fee not to exceed twenty-five dollars for each payment returned unpaid.**

12
13 **If the installment is for twenty-five dollars or less, a charge for late payment on each**
14 **installment or minimum payment in default for a period of no less than fifteen days shall**
15 **not exceed five dollars but a minimum charge of one dollar may be made.**

364.040. 1. Renewal of a license originally granted under this chapter may be denied,
2 or a license may be suspended or revoked by the director on the following grounds:

3 (1) Material misstatement of fact in any application for license under this chapter;

4 (2) Willful failure to comply with provisions of this chapter relating to retail time
5 transactions;

6 (3) Defrauding any retail buyer to the buyer's damage;

7 (4) Fraudulent misrepresentation, circumvention or concealment by the licensee through
8 whatever subterfuge or device of any of the material particulars or the nature thereof required to
9 be stated or furnished to a buyer under the Missouri retail credit sales law (sections 408.250 to
10 408.370).

11 2. ~~[If a licensee is a firm, association or corporation, it shall be sufficient cause for the~~
12 ~~suspension or revocation of a license that any officer, director or trustee of a licensed firm,~~
13 ~~association or corporation, or any member of a licensed partnership, has so acted or failed to act~~
14 ~~as would be cause for suspending or revoking a license to the party as an individual. Each~~
15 ~~licensee shall be responsible for the acts of any or all of his employees while acting as his agent,~~
16 ~~if such licensee, after actual knowledge of the acts, retained the benefits, proceeds, profits or~~
17 ~~advantages accruing from the acts or otherwise ratified the acts.~~

18 ~~3. No license shall be denied, suspended or revoked except after hearing thereon. The~~
19 ~~hearing and review thereof shall be conducted according to chapter 536.] Any person licensed~~
20 **pursuant to this chapter who fails, refuses, or neglects to comply with the provisions of this**
21 **chapter or any laws relating to consumer loans or who commits any criminal act may have**
22 **the person's license suspended or revoked by the director after a hearing before the**
23 **director on an order by the director to show cause as to why the person's license should not**
24 **be suspended or revoked. The order shall be served on the person at least ten days prior**
25 **to the hearing and shall specify the grounds for suspension or revocation.**

26 3. **If, in the discretion of the director, a person licensed pursuant to this chapter**
27 **appears to fail, refuse, or neglect to make a good faith effort to comply with the provisions**
28 **of this chapter or any laws relating to consumer loans, the director may issue an order to**
29 **cease and desist, which may be enforceable by a civil penalty of no more than one thousand**
30 **dollars per day for each day the failure, refusal, or neglect continues. Any penalty shall**
31 **be assessed and collected by the director. In determining the amount of the penalty, the**
32 **director shall consider seriousness of the violation, the history of previous violations, and**
33 **such other matters as justice may require.**

365.020. Unless otherwise clearly indicated by the context, the following words and
2 phrases have the meanings indicated:

3 (1) "Cash sale price", the price stated in a retail installment contract for which the seller
4 would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle
5 which is the subject matter of the retail installment contract, if the sale had been a sale for cash
6 or at a cash price instead of a retail installment transaction at a time sale price. The cash sale
7 price may include any taxes, registration, certificate of title, license and other fees and charges

8 for accessories and their installment and for delivery, servicing, repairing or improving the motor
9 vehicle;

10 (2) "Director", the office of the director of the division of finance;

11 (3) "Holder" of a retail installment contract, the retail seller of the motor vehicle under
12 the contract or, if the contract is purchased by a sales finance company or other assignee, the
13 sales finance company or other assignee;

14 (4) "Insurance company", any form of lawfully authorized insurer in this state;

15 (5) "Motor vehicle", any new or used automobile, mobile home, manufactured home as
16 defined in section 700.010, excluding a manufactured home with respect to which the
17 requirements of subsections 1 to 3 of section 700.111, as applicable, have been satisfied,
18 motorcycle, all-terrain vehicle, motorized bicycle, moped, motortricycle, truck, **or** trailer,
19 ~~[semitrailer, truck tractor, or bus]~~ primarily designed ~~[or used to transport persons or property~~
20 ~~on a public highway, road or street]~~ **for household or personal use**;

21 (6) "Official fees", the fees prescribed by law for filing, recording or otherwise perfecting
22 and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail
23 installment transaction;

24 (7) "Person", an individual, partnership, corporation, association, and any other group
25 however organized;

26 (8) "Principal balance", the cash sale price of the motor vehicle which is the subject
27 matter of the retail installment transaction plus the amounts, if any, included in the sale~~[-if a~~
28 ~~separate identified charge is made therefor and stated in the contract,]~~ for insurance and other
29 ~~[benefits]~~ **products**, including any amounts paid or to be paid by the seller pursuant to an
30 agreement with the buyer to discharge a security interest, lien, or lease interest on property traded
31 in and official fees, minus the amount of the buyer's down payment in money or goods.
32 Notwithstanding any law to the contrary, any amount actually paid by the seller pursuant to an
33 agreement with the buyer to discharge a security interest, lien or lease on property traded in
34 which was included in a contract prior to August 28, 1999, is valid and legal;

35 (9) "Retail buyer" or "buyer", a person who buys a motor vehicle from a retail seller in
36 a retail installment transaction under a retail installment contract;

37 (10) "Retail installment contract" or "contract", an agreement evidencing a retail
38 installment transaction entered into in this state pursuant to which ~~[the title to or]~~ a lien upon the
39 motor vehicle, which is the subject matter of the retail installment transaction is retained or taken
40 by the seller from the buyer as security for the buyer's obligation~~[-The term includes a chattel~~
41 ~~mortgage or a conditional sales contract];~~

42 (11) "Retail installment transaction", a sale of a motor vehicle by a retail seller to a retail
43 buyer on time under a retail installment contract for a time sale price payable in one or more
44 deferred installments;

45 (12) "Retail seller" or "seller", a person who sells a motor vehicle, not principally for
46 resale, to a retail buyer under a retail installment contract;

47 (13) "Sales finance company", a person engaged, in whole or in part, in the business of
48 **originating or** purchasing retail installment contracts [~~from one or more sellers~~]. The term
49 includes but is not limited to a bank, trust company, loan and investment company, savings and
50 loan association, financing institution, or registrant pursuant to sections 367.100 to 367.200, if
51 so engaged. The term shall not include a person who **sells or otherwise assigns retail**
52 **installment contracts within thirty days of execution or** makes only isolated **originations or**
53 purchases of retail installment contracts[~~, which purchases are not being made in the course of~~
54 ~~repeated or successive purchases of retail installment contracts from the same seller~~];

55 (14) "Time price differential", the amount, however denominated or expressed, as
56 limited by section 365.120, in addition to the principal balance to be paid by the buyer for the
57 privilege of purchasing the motor vehicle on time to be paid for by the buyer in one or more
58 deferred installments;

59 (15) "Time sale price", the total of the cash sale price of the motor vehicle and the
60 amount, if any, included for insurance and other [~~benefits~~] **products** if a separate identified
61 charge is made therefor and the amounts of the official fees and time price differential.

365.040. 1. Renewal of a license originally granted under this chapter may be denied,
2 or a license may be suspended or revoked by the director on the following grounds:

3 (1) Material misstatement in the application for license;

4 (2) Willful failure to comply with any provision of this chapter relating to retail
5 installment contracts;

6 (3) Defrauding any retail buyer to the buyer's damage;

7 (4) Fraudulent misrepresentation, circumvention or concealment by the licensee through
8 whatever subterfuge or device of any of the material particulars or the nature thereof required to
9 be stated or furnished to the retail buyer under this chapter.

10 2. [~~If a licensee is a partnership, association or corporation, it shall be sufficient cause~~
11 ~~for the suspension or revocation of a license that any officer, director or trustee of a licensed~~
12 ~~association or corporation, or any member of a licensed partnership, has so acted or failed to act~~
13 ~~as would be cause for suspending or revoking a license to the party as an individual. Each~~
14 ~~licensee shall be responsible for the acts of any or all of his employees while acting as his agent,~~
15 ~~if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits or~~
16 ~~advantages accruing from the acts or otherwise ratified the acts.] **Any person licensed pursuant**~~

17 to this chapter who fails, refuses, or neglects to comply with the provisions of this chapter
18 or any laws relating to consumer loans or who commits any criminal act may have the
19 person's license suspended or revoked by the director after a hearing before the director
20 on an order by the director to show cause as to why the person's license should not be
21 suspended or revoked. The order shall be served on the person at least ten days prior to
22 the hearing and shall specify the grounds for suspension or revocation.

23 3. ~~No license shall be denied, suspended or revoked except after hearing thereon. The~~
24 ~~hearing and review thereof shall be conducted according to chapter 536.]~~ If, in the discretion
25 of the director, a person licensed pursuant to this chapter appears to fail, refuse, or neglect
26 to make a good faith effort to comply with the provisions of this chapter or any laws
27 relating to consumer loans, the director may issue an order to cease and desist, which may
28 be enforceable by a civil penalty of no more than one thousand dollars per day for each day
29 the failure, refusal, or neglect continues. Any penalty shall be assessed and collected by the
30 director. In determining the amount of the penalty, the director shall consider seriousness
31 of the violation, the history of previous violations, and such other matters as justice may
32 require.

365.070. 1. Each retail installment contract shall be in writing, shall be signed by both
2 the buyer and the seller, and shall be completed as to all essential provisions prior to the signing
3 of the contract by the buyer. In addition to the retail installment contract, the seller may require
4 the buyer to execute and deliver a negotiable promissory note to evidence the indebtedness
5 created by the retail installment transaction and the seller may require security for the payment
6 of the indebtedness or the performance of any other condition of the transaction. Every note
7 executed pursuant to a retail installment contract shall expressly state that it is subject to
8 prepayment privilege required by law and the refund required by law in such cases. Any such
9 note, if otherwise negotiable under the provisions of sections 400.3-101 to 400.3-805, shall be
10 negotiable. The retail installment contract may evidence the security.

11 2. The printed portion of the contract, other than instructions for completion, shall be in
12 at least eight-point type. The contract shall contain the following notice in a size equal to at least
13 ten-point bold type:

14 "Notice to the Buyer.

15

16 Do not sign this contract before you read it or if it contains any blank spaces.

17

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

19

20 Under the law you have the right to pay off in advance the full amount due and
21 to obtain a partial refund of the time price differential."

22 3. The contract shall also contain, in a size equal to at least ten-point bold type, a specific
23 statement that liability insurance coverage for bodily injury and property damage caused to others
24 is not included if that is the case.

25 4. The seller shall deliver to the buyer, or mail to him at his address shown on the
26 contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not
27 received delivery of the motor vehicle may rescind his agreement and receive a refund of all
28 payments made and return of all goods traded in to the seller on account of or in contemplation
29 of the contract, or if the goods cannot be returned, the value thereof. Any acknowledgment by
30 the buyer of delivery of a copy of the contract shall be in a size equal to at least ten-point bold
31 type and, if contained in the contract, shall appear directly above the buyer's signature.

32 5. The contract shall contain the names of the seller and the buyer, the place of business
33 of the seller, the residence of the buyer and a brief description of the motor vehicle including its
34 make, year model, model and identification numbers or marks.

35 6. The contract shall contain the following items:

36 (1) The cash sale price of the motor vehicle;

37 (2) The amount of the buyer's down payment, and whether made in money or goods, or
38 partly in money and partly in goods, including a brief description of the goods traded in;

39 (3) The difference between items one and two;

40 (4) The aggregate amount, if any, if a separate identified charge is made therefor,
41 included for all insurance on the motor vehicle against loss, damage to or destruction of the
42 motor vehicle, specifying the types of coverage and period;

43 (5) The aggregate amount, if any, if a separate identified charge is made therefor,
44 included for all bodily injury and property damage liability insurance for injuries to the person
45 or property of others, specifying the types of coverage and coverage period;

46 (6) The aggregate amount, if any, if a separate identified charge is made therefor,
47 included for all life, accident or health insurance, specifying the types of coverage and coverage
48 period;

49 (7) The amounts, if any, if a separate identified charge is made therefor, included for
50 other insurance ~~[and benefits]~~ **or products**, specifying the types of coverage ~~[and]~~ , benefits, and
51 ~~[the]~~ coverage periods and separately stating each amount ~~[for each insurance premium or~~
52 ~~benefit]~~;

53 (8) The amount of official fees;

54 (9) The principal balance which is the sum of items (3), (4), (5), (6), (7) and (8);

55 (10) The amount of the time price differential expressed in the contract as a percent per
56 annum;

57 (11) The total amount of the time balance stated as one sum in dollars and cents, which
58 is the sum of items (9) and (10), payable in installments by the buyer to the seller, the number
59 of installments, the amount of each installment and the due date or period thereof based on the
60 contract's original amortization schedule; and

61 (12) The time sale price.

62

63 The above items need not be stated in the sequence or order set forth.

365.080. 1. The amount, if any, included in any retail installment transaction for
2 insurance, if a separate identified charge is made for the insurance, which insurance may be
3 purchased by the holder of the contract, shall not exceed the applicable premiums chargeable in
4 accordance with the rates approved by the department of commerce and insurance of this state
5 where the rates are required by law to be approved by the department. All insurance shall be
6 written by an insurance company authorized to do business in this state and all policies written
7 in this state shall be countersigned by a duly licensed resident agent authorized to engage in the
8 insurance business in this state, unless otherwise provided by law. A buyer may be required to
9 provide insurance on the motor vehicle at his own cost for the protection of the seller or holder,
10 as well as the buyer, but the insurance shall be limited to insurance against substantial risk of
11 loss, damage or destruction of the motor vehicle. Any other insurance, including insurance
12 providing involuntary unemployment coverage, may be included in a retail installment
13 transaction at the buyer's expense only if contracted for voluntarily by the buyer. If the insurance
14 for which the identified charge is made insures the safety or health of the buyer or his interest
15 in the motor vehicle and is purchased by the holder, it shall be subject to the limitations provided
16 for in the regulations promulgated and issued by the director pursuant to the provision of
17 subsection 1 of section 365.060. The holder shall within thirty days after the execution of the
18 retail installment contract send or cause to be sent to the buyer a policy or certificate of
19 insurance, clearly setting forth the amount of the cost of the policy or certificate of insurance, the
20 kinds of insurance, and, if a policy, all the terms, exceptions, limitations, restrictions and
21 conditions of the contract of insurance, or, if a certificate, a summary of the certificate. The
22 seller shall not decline existing insurance written by an insurance company authorized to do
23 business in this state and the buyer shall have the privilege of purchasing insurance from an agent
24 or broker of his own selection and of selecting his insurance company; except, that the insurance
25 company shall be acceptable to the holder, and further, that the inclusion of the cost of the
26 insurance in the retail installment contract when the buyer selects his agent, broker or company,
27 shall be optional with the seller.

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

32 3. The amount of any life insurance shall not exceed the amount of the total unpaid
33 balance from time to time; except, that where the buyer's obligation is repayable in payments
34 which are not substantially equal in amount, the insurance may be level term insurance in an
35 amount which shall not exceed by more than five dollars the time balance as determined under
36 subsection 6 of section 365.070.

37 4. Nothing in this chapter shall be construed to prohibit the sale of a deficiency waiver
38 addendum, guaranteed asset protection, extended service contract, or other similar products
39 purchased at the time of sale, as part of a retail sale transaction involving any motor vehicle, or
40 including the cost therefor within a retail installment transaction, provided the **cost of the**
41 **product is disclosed; the cost is reasonable; and the** requirements of section 365.070,
42 **subdivision (11) of subsection 1 of section 408.140, and section 408.380** are met.

365.100. 1. For contracts entered into on or after August 28, 2005, if the contract so
2 provides, the holder thereof may charge, finance, and collect:

3 (1) A charge for late payment on each installment or minimum payment in default for
4 a period of not less than fifteen days in an amount not to exceed five percent of each installment
5 due or the minimum payment due or twenty-five dollars, whichever is less; except that, a
6 minimum charge of ten dollars may be made, or when the installment is for twenty-five dollars
7 or less, a charge for late payment for a period of not less than fifteen days shall not exceed five
8 dollars, provided, however, that a minimum charge of one dollar may be made;

9 (2) Interest on each delinquent payment at a rate which shall not exceed the highest
10 lawful contract rate. In addition to such charge, the contract may provide for the payment of
11 attorney fees not exceeding fifteen percent of the amount due and payable under the contract
12 where the contract is referred for collection to any attorney not a salaried employee of the holder,
13 plus court costs;

14 (3) ~~[A dishonored or insufficient funds check fee equal to such fee as provided in section~~
15 ~~408.653, in addition to fees charged by a bank for each check, draft, order or like instrument~~
16 ~~which is]~~ **A fee not to exceed twenty-five dollars for each payment** returned unpaid; and

17 (4) All other reasonable expenses incurred in the origination, servicing, and collection
18 of the amount due under the contract.

19 2. A holder of a contract may impose a convenience fee for payments using an
20 alternative payment channel that accepts a debit or credit card not present transaction,
21 nonface-to-face payment, provided that:

- 22 (1) The person making the payment is notified of the convenience fee; and
- 23 (2) The fee is fixed or flat, except that the fee may vary based upon method of payment
- 24 used.

365.140. Notwithstanding the provisions of any retail installment contract to the contrary
 2 any buyer may prepay in full, whether by payment in cash, extension or renewal, at any time
 3 before maturity the debt of any retail installment contract and on so paying the debt shall receive
 4 a refund credit thereon for the anticipation of payment. The amount of the refund shall be
 5 calculated by the actuarial method. The lender shall retain no more interest than is actually
 6 earned whenever a retail installment contract is prepaid. Any insurance **or product** rendered
 7 unnecessary by reason of prepayment shall be cancelled by the holder, and any ~~refund of~~
 8 ~~premiums received by the holder]~~ **refunds due thereunder** shall be treated in accordance with
 9 the provisions of subsection 2 of section 365.080 **and section 408.380.**

10

~~[365.125. As an alternative to the time price differential authorized by
 2 section 365.120, the parties may agree to any rate or amount of time price
 3 differential not exceeding a rate or amount authorized by section 408.450, but any
 4 such agreement shall be subject to the restrictions and conditions of sections
 5 408.450 to 408.467.]~~

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