PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2611

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:
2 "Section 1. Section 6-122, Arizona Revised Statutes, is amended to read:
3 6-122. Superintendent; authority; duties; exemption
4 A. The superintendent has the authority and responsibility for the discharge of all duties imposed by law on the department.
5 B. The superintendent shall:
6 1. Examine or cause to be examined each financial institution annually, except financial institution holding companies, banks, savings and loan associations, credit unions and consumer lenders, and more frequently if the superintendent considers it necessary.
7 2. Examine or cause to be examined each bank, credit union and savings and loan association at the superintendent's discretion but at least once in every twenty-four month period.
8 3. Examine or cause to be examined the business and affairs of any enterprise and any consumer lender for the purpose of administering and enforcing this title at the superintendent's discretion but at least once in a five year period.
9 4. Examine or cause to be examined financial institution holding companies as frequently as the superintendent considers necessary to administer and enforce this title.
10 5. Notwithstanding paragraph 3 OF THIS SUBSECTION, examine or cause to be examined the accounts held in trust by each escrow agent at least once in every two year period in accordance with PURSUANT TO section 20-1593 and examine or cause to be examined each escrow agent at least once in every four year period or more frequently if the superintendent considers it necessary.
6. Notwithstanding paragraph 3 OF THIS SUBSECTION, examine or cause to be examined each premium finance company at least once in every three year period and more frequently if the superintendent considers it necessary.

7. Publish a consumer information brochure that includes:
   (a) The finance charges permitted by this state.
   (b) The types of insurance that may be offered but that are not required by law to be purchased with the granting of a loan.
   (c) Interest rate limitations on all lenders including amounts that may not be charged to borrowers.
   (d) Consumer rights and means of recourse from unfair practitioners.

8. ENFORCE SECTION 670 OF THE JOHNN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007 (P.L. 109-364; 120 STAT. 2083; 10 UNITED STATES CODE SECTION 987) OR ANY REGULATION ADOPTED PURSUANT TO THAT ACT, INCLUDING 32 CODE OF FEDERAL REGULATIONS PART 232.

C. Notwithstanding subsection B, paragraph 5 of this section, an escrow agent shall be examined within twelve months when an escrow agent's license is transferred or assigned pursuant to section 6-813 or when control of the license is otherwise acquired.

D. Subsection B, paragraph 3 of this section does not apply to motor vehicle dealers, sales finance companies or persons licensed under chapter 12 of this title.

Sec. 2. Section 6-123, Arizona Revised Statutes, is amended to read:

6-123. Superintendent; powers

In addition to the other powers, express or implied, the superintendent may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with PURSUANT TO title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit
transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:
   (a) A banking permit.
   (b) Permission to organize a savings and loan association or credit union.
   (c) Any license.
   (d) Any certificate.
   (e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receipt of the request of the superintendent.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the
formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The superintendent may allow the system to collect licensing fees on behalf of the superintendent, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the superintendent, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

9. TO ASSIST IN ENFORCEMENT THAT IS REQUIRED PURSUANT TO SECTION 6-122, SUBSECTION B, PARAGRAPH 8, ENTER INTO AN AGREEMENT WITH THE FEDERAL TRADE COMMISSION TO ALLOW THE SUPERINTENDENT TO ACCESS THE MILITARY SENTINEL NETWORK THAT IS MAINTAINED BY THE FEDERAL TRADE COMMISSION.

Sec. 3. Section 44-283, Arizona Revised Statutes, is amended to read:

44-283. Denial, suspension or revocation of licenses

A. The administrator may deny a license applied for under this chapter or suspend or revoke a license issued under this chapter on any of the following grounds:

1. Material misstatement in the application for a license.

2. A violation, either knowingly or without the exercise of due care to prevent the violation, of this chapter or of any rule or order adopted or issued pursuant to this chapter.

3. Defrauding any retail buyer to the buyer's damage.

4. Fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this article.
5. Conviction in any state of a felony or a misdemeanor involving breach of trust or dishonesty.

6. Having a judgment or order entered against the licensee or applicant by an administrative agency of this or any other state or by the federal government in which one of the bases of the judgment or order is fraud, deceit or misrepresentation, if the conduct was engaged in directly by the licensee or applicant or was authorized, solicited, commanded or knowingly permitted by the directors or senior management of the licensee or applicant.

7. FOR GOOD CAUSE, INCLUDING A VIOLATION OF ANY STATUTE, RULE, ORDER OR WRITTEN CONDITION OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS OR ANY FEDERAL STATUTE, RULE OR REGULATION RELATING TO A SECONDARY MOTOR VEHICLE FINANCE TRANSACTION.

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

C. IF A PERSON HAS A LICENSE SUSPENDED OR REVOKED PURSUANT TO THIS SECTION, THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS MAY SUSPEND OR REVOKE ANY OTHER LICENSE THAT THE DEPARTMENT OF FINANCIAL INSTITUTIONS HAS ISSUED TO THE PERSON.

D. Hearings on the denial, suspension or revocation of a license shall be conducted pursuant to title 41, chapter 6, article 10. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired by the licensee before the revocation, suspension or surrender of the license.

Sec. 4. Section 44-291, Arizona Revised Statutes, is amended to read:
44-291. Computation of interest; prepayment rebate; additional charges; secondary motor vehicle finance transaction; definitions

A. Except as provided in subsections G and H of this section, under a retail installment contract it is lawful to charge and receive interest not to exceed the maximum rate set by contract.

B. The finance charge may be computed either at a single annual percentage rate using the actuarial method or it may be precomputed on the assumption that all payments will be made in the amount and on the dates scheduled. If the finance charge is precomputed, the fact that payments are made either before or after the date due does not affect the amount of finance charge which the seller or holder may charge or receive. If the precomputed contract balance is prepaid in full by cash, a new loan, refinancing or otherwise, the seller or holder shall charge only for the finance charge which has been earned and unpaid late payment or delinquency charges as of the date of prepayment, and the buyer shall receive a rebate of that portion of the precomputed finance charge which is the difference between the total precomputed finance charges and the charges at the contract finance charge computed on the unpaid principal balance based on the number of days or months to maturity based on either a thirty day month - three hundred sixty day year or daily three hundred sixty-five or three hundred sixty-six day year on the number of days remaining to final maturity, except that the number of days shall be the same as that used in calculating the finance charge as prescribed in subsection C of this section. The amount of such rebate shall not be computed pursuant to the method commonly known as the "rule of 78's". To simplify the calculation of earned finance charge, it is permissible to assume that all payments were made as originally scheduled or as otherwise mutually agreed.

C. It is permissible to calculate a finance charge on an annual basis of twelve months of thirty days each, or on a daily basis if a day is counted as 1/360th, 1/365th, or 1/366th of a year, as the buyer and seller or holder may agree by writing. The seller or holder may also charge a late payment or
delinquency charge, in addition to all finance charges permitted, on each installment not paid in full on the tenth day after its due date in an amount not to exceed five \text{\%\%} of the unpaid balance of the installment.

D. In addition to the cash sale price of the vehicle, the seller may charge for any insurance premiums incurred in connection with the retail installment transaction.

E. Notwithstanding the late payment or delinquency charge provided in subsection C of this section, in a commercial transaction, the seller or holder may charge a late payment or delinquency charge, in addition to all finance charges permitted, on each installment not paid in full on the tenth day after its due date in an amount of not more than five \text{\%\%} of the unpaid balance of the installment.

F. Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed on between them. Filing of the assignment notice to the buyer of the assignment and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed is not necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment under the contract made by the buyer to the last known holder of such contract is binding on all subsequent holders.

G. If the retail installment contract is a secondary motor vehicle finance transaction, the seller, bailor, lender or lessor shall determine the annual secondary motor vehicle finance rate and all charges relating to the sale, conditional sale, bailment or lease and repurchase of the vehicle. The seller, bailor, lender or lessor shall calculate the annual secondary motor vehicle finance rate by multiplying the monthly secondary motor vehicle finance rate by twelve. A retail installment contract that is a secondary motor vehicle finance transaction is subject to the following maximum finance rates on a secondary motor vehicle finance contract in the original principal amount of:
1. Five hundred dollars or less, a monthly finance rate of seventeen \textpercnt\ PERCENT.

2. More than five hundred dollars but not more than two thousand five hundred dollars, a monthly finance rate of fifteen \textpercnt\ PERCENT.

3. More than two thousand five hundred dollars but not more than five thousand dollars, a monthly finance rate of thirteen \textpercnt\ PERCENT.

4. More than five thousand dollars, a monthly finance rate of ten \textpercnt\ PERCENT.

H. Except as the result of an accidental or bona fide error, if the licensee charges, contracts for or receives any amount in excess of the finance charges and other fees expressly permitted by this chapter, the secondary motor vehicle transaction is voidable and the licensee has no right to collect or receive any principal, finance charges or other fees in connection with that secondary motor vehicle finance transaction. Any secondary motor vehicle finance transaction that is made by a person who is required to be licensed pursuant to this chapter but who is not licensed is void, and the person has no right to collect, receive or retain any principal, finance charges or other fees in connection with that secondary motor vehicle finance transaction.

I. Section 44-287, subsection B does not apply to a secondary motor vehicle finance transaction if the contract complies with the disclosure requirements prescribed in federal law. The seller shall conspicuously disclose in the contract the annual secondary motor vehicle finance rate.

J. FOR SECONDARY MOTOR VEHICLE FINANCE TRANSACTIONS, A VIOLATION OF SECTION 670 OF THE JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007 (P.L. 109-364; 120 STAT. 2083; 10 UNITED STATES CODE SECTION 987) OR ANY REGULATION ADOPTED PURSUANT TO THAT ACT, INCLUDING 32 CODE OF FEDERAL REGULATIONS PART 232, IS A VIOLATION OF THIS SECTION.

K For the purposes of this section:

1. "Actuarial method" means the method of allocating payments made on a debt between the unpaid principal balance and the finance charge pursuant
to which a payment is applied first to the finance charge due and any
remainder is subtracted from the unpaid principal balance.

2. "Commercial transaction" means a transaction in which the motor
vehicle is intended by the borrower for use primarily for other than
personal, family or household purposes."

Amend title to conform