

REFERENCE TITLE: auto title loans; military members

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HB 2258

Introduced by
Representatives McCune Davis: Alston, Clark, Gabaldón, Mendez

AN ACT

AMENDING SECTIONS 6-122, 6-123, 44-283 AND 44-291, ARIZONA REVISED STATUTES;
RELATING TO LENDING PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 6-122, Arizona Revised Statutes, is amended to
3 read:

4 6-122. Superintendent; authority; duties; exemption

5 A. The superintendent has the authority and responsibility for the
6 discharge of all duties imposed by law on the department.

7 B. The superintendent shall:

8 1. Examine or cause to be examined each financial institution
9 annually, except financial institution holding companies, banks, savings and
10 loan associations, credit unions and consumer lenders, and more frequently if
11 the superintendent considers it necessary.

12 2. Examine or cause to be examined each bank, credit union and savings
13 and loan association at the superintendent's discretion but at least once in
14 every twenty-four month period.

15 3. Examine or cause to be examined the business and affairs of any
16 enterprise and any consumer lender for the purpose of administering and
17 enforcing this title at the superintendent's discretion but at least once in
18 a five-year period.

19 4. Examine or cause to be examined financial institution holding
20 companies as frequently as the superintendent considers necessary to
21 administer and enforce this title.

22 5. Notwithstanding paragraph 3 **OF THIS SUBSECTION**, examine or cause to
23 be examined the accounts held in trust by each escrow agent at least once in
24 every two-year period ~~in accordance with~~ **PURSUANT TO** section 20-1593 and
25 examine or cause to be examined each escrow agent at least once in every
26 four-year period or more frequently if the superintendent considers it
27 necessary.

28 6. Notwithstanding paragraph 3 **OF THIS SUBSECTION**, examine or cause to
29 be examined each premium finance company at least once in every three-year
30 period and more frequently if the superintendent considers it necessary.

31 7. Publish a consumer information brochure that includes:

32 (a) The finance charges permitted by this state.

33 (b) The types of insurance that may be offered but that are not
34 required by law to be purchased with the granting of a loan.

35 (c) Interest rate limitations on all lenders including amounts that
36 may not be charged to borrowers.

37 (d) Consumer rights and means of recourse from unfair practitioners.

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

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

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

4 Sec. 2. Section 6-123, Arizona Revised Statutes, is amended to read:
5 6-123. Superintendent; powers

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

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

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

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

18 4. Submit to the department of public safety, or the nationwide
19 mortgage licensing system and registry established by the secure and fair
20 enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810;
21 12 United States Code sections 5101 through 5116) or its successor, the name
22 and fingerprints of any applicant, licensee, active manager or responsible
23 individual or the name and fingerprints of any organizer, director or officer
24 of any corporate applicant or licensee for:

25 (a) A banking permit.

26 (b) Permission to organize a savings and loan association or credit
27 union.

28 (c) Any license.

29 (d) Any certificate.

30 (e) Authority to engage in interstate banking and branching in this
31 state.

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

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

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

43 7. Cooperate with other regulatory agencies and professional
44 associations to promote the efficient, safe and sound operation and
45 regulation of interstate banking and branching activities, including the

1 formulation of interstate examination policies and procedures and the
2 drafting of model rules and agreements.

3 8. Participate in the nationwide mortgage licensing system and
4 registry established by the secure and fair enforcement for mortgage
5 licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code
6 sections 5101 through 5116) or its successor. The superintendent may allow
7 the system to collect licensing fees on behalf of the superintendent, to
8 collect a processing fee for the services of the system directly from each
9 applicant for a license or licensee and to process and maintain records on
10 behalf of the superintendent, including information collected pursuant to
11 this section and section 6-123.01. This paragraph does not affect the
12 records disclosure requirements and limitations prescribed in section
13 6-129.01.

14 9. TO ASSIST IN ENFORCEMENT THAT IS REQUIRED PURSUANT TO SECTION
15 6-122, SUBSECTION B, PARAGRAPH 8, ENTER INTO AN AGREEMENT WITH THE FEDERAL
16 TRADE COMMISSION TO ALLOW THE SUPERINTENDENT TO ACCESS THE MILITARY SENTINEL
17 NETWORK THAT IS MAINTAINED BY THE FEDERAL TRADE COMMISSION.

18 Sec. 3. Section 44-283, Arizona Revised Statutes, is amended to read:
19 44-283. Denial, suspension or revocation of licenses

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

23 1. Material misstatement in the application for a license.

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

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

28 4. Fraudulent misrepresentation, circumvention or concealment by the
29 licensee through whatever subterfuge or device of any of the material
30 particulars or the nature thereof required to be stated or furnished to the
31 retail buyer under this article.

32 5. Conviction in any state of a felony or a misdemeanor involving
33 breach of trust or dishonesty.

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

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

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

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

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

19 Sec. 4. Section 44-291, Arizona Revised Statutes, is amended to read:

20 44-291. Computation of interest; prepayment rebate; additional
21 charges; secondary motor vehicle finance transaction;
22 military members; definitions

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

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

1 finance charge, it is permissible to assume that all payments were made as
2 originally scheduled or as otherwise mutually agreed.

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

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

13 E. Notwithstanding the late payment or delinquency charge provided in
14 subsection C of this section, in a commercial transaction, the seller or
15 holder may charge a late payment or delinquency charge, in addition to all
16 finance charges permitted, on each installment not paid in full on the tenth
17 day after its due date in an amount of not more than five ~~per cent~~ PERCENT of
18 the unpaid balance of the installment.

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

29 G. If the retail installment contract is a secondary motor vehicle
30 finance transaction, the seller, bailor, lender or lessor shall determine the
31 annual secondary motor vehicle finance rate and all charges relating to the
32 sale, conditional sale, bailment or lease and repurchase of the vehicle. The
33 seller, bailor, lender or lessor shall calculate the annual secondary motor
34 vehicle finance rate by multiplying the monthly secondary motor vehicle
35 finance rate by twelve. A retail installment contract that is a secondary
36 motor vehicle finance transaction is subject to the following maximum finance
37 rates on a secondary motor vehicle finance contract in the original principal
38 amount of:

39 1. Five hundred dollars or less, a monthly finance rate of seventeen
40 ~~per cent~~ PERCENT.

41 2. More than five hundred dollars but not more than two thousand five
42 hundred dollars, a monthly finance rate of fifteen ~~per cent~~ PERCENT.

43 3. More than two thousand five hundred dollars but not more than five
44 thousand dollars, a monthly finance rate of thirteen ~~per cent~~ PERCENT.

1 4. More than five thousand dollars, a monthly finance rate of ten ~~per~~
2 ~~cent~~ PERCENT.

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

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

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

23 ~~J.~~ K. For the purposes of this section:

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

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