

REFERENCE TITLE: motor vehicle title loans; prohibition

State of Arizona
House of Representatives
Fifty-third Legislature
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2018

HB 2220

Introduced by
Representatives Salman: Alston, Andrade, Blanc, Bolding, Cardenas,
Chávez, Clark, Descheenie, Espinoza, Fernandez, Gonzales, Powers
Hannley, Rios, Saldate, Senators Mendez, Peshlakai

AN ACT

AMENDING SECTIONS 44-281, 44-286 AND 44-291, ARIZONA REVISED STATUTES;
RELATING TO MOTOR VEHICLE TITLE LOANS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 44-281, Arizona Revised Statutes, is amended to
3 read:

4 44-281. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Administrator" means the superintendent of financial
7 institutions.

8 2. "Cash sale price" means the price stated in a retail installment
9 contract for which the seller would have sold to the buyer, and the buyer
10 would have bought from the seller, the motor vehicle ~~which~~ THAT is the
11 subject matter of the retail installment contract, if such sale had been a
12 sale for cash instead of a retail installment transaction. The cash sale
13 price may include charges for accessories and their installation and for
14 delivery, and servicing, repairing or improving the motor vehicle, and for
15 charges for other costs that are necessary or incidental to the
16 transaction and that the seller furnishes or agrees to pay on behalf of
17 the buyer, including taxes, assessor's fees, license fees and fees for
18 filing, recording or otherwise perfecting or releasing a reserved title or
19 lien, and may include a reasonable charge for the seller's services.

20 3. "Finance charge" means the amount agreed ~~upon~~ ON between the
21 buyer and the seller, as limited herein, which in determining the cost of
22 the motor vehicle is added to the aggregate of the following: The cash
23 sale price and the amount, if any, included for insurance and other
24 benefits where a separate cost is assigned thereto.

25 4. "Holder" of a retail installment contract means the retail
26 seller of the motor vehicle under or subject to the contract or, if the
27 contract is purchased by a sales finance company or other assignee, the
28 sales finance company or other assignee.

29 5. "Motor vehicle" means any self-propelled device in or by which
30 any person or property is or may be transported or drawn on a public
31 highway, except:

32 (a) Devices that move ~~upon~~ ON or are guided by a track or travel
33 through the air.

34 (b) The following, if not designed primarily for highway
35 transportation, but ~~which~~ THAT may incidentally be operated on a public
36 highway:

37 (i) Tractors.

38 (ii) Buses.

39 (iii) Trucks.

40 (iv) Power shovels.

41 (v) Road machinery.

42 (vi) Agricultural machinery.

43 6. "Person" means an individual, partnership, association, trust,
44 corporation, or other legal entity.

1 7. "Retail buyer" or "buyer" means a person who buys a motor
2 vehicle from a retail seller, not for the purpose of resale, and who
3 executes a retail installment contract in connection therewith.

4 8. "Retail installment contract" or "contract":

5 (a) Means an agreement, entered into in this state, pursuant to
6 which the title to or a lien ~~अपण~~ ON the motor vehicle, which is the
7 subject matter of a retail installment transaction, is retained or taken
8 by a retail seller from a retail buyer as security for the buyer's
9 obligation.

10 (b) Includes:—

11 ~~(i)~~ a conditional sales contract and a contract for the bailment or
12 leasing of a motor vehicle by which the bailee or lessee contracts to pay
13 as compensation for its use a sum substantially equivalent to or in excess
14 of its value and by which it is agreed that the bailee or lessee is bound
15 to become, or has the option of becoming, the owner of the motor vehicle
16 for no other or a nominal consideration ~~अपण~~ ON full compliance with the
17 provisions of the contract.

18 ~~(ii) A secondary motor vehicle finance transaction.~~

19 9. "Retail installment transaction" means any transaction evidenced
20 by a retail installment contract entered into between a retail buyer and a
21 retail seller wherein the retail buyer buys a motor vehicle from the
22 retail seller at a cost payable in one or more deferred installments. The
23 cash sale price of the motor vehicle, the amount included for insurance if
24 a separate charge is made and the finance charge shall together constitute
25 the cost of the motor vehicle.

26 10. "Retail seller" or "seller" means a person who sells a motor
27 vehicle to a retail buyer for purposes other than resale under or subject
28 to a retail installment contract. For the purposes of paragraph 12 of
29 this section "seller" means a person who sells and retains the use of the
30 motor vehicle.

31 11. "Sales finance company":

32 (a) Means a person engaged, in whole or in part, in the business of
33 purchasing retail installment contracts from one or more retail sellers.

34 (b) Includes a person engaged, in whole or in part, in the business
35 of creating or holding retail installment contracts that exceed a total
36 aggregate outstanding indebtedness of fifty thousand dollars.

37 (c) Does not include:

38 (i) The pledgee of an aggregate number of retail installment
39 contracts to secure a bona fide loan thereon.

40 (ii) A motor vehicle dealer who creates retail installment
41 contracts and assigns the retail installment contracts to third party
42 lenders or financial institutions.

43 12. "Secondary motor vehicle finance transaction":

44 (a) Means any contract that includes provisions for either:

1 (i) Obtaining a security interest in or lien on a motor vehicle
2 other than in connection with the sale of that motor vehicle.

3 (ii) The sale or conditional sale of a motor vehicle and the
4 seller's right to retain use of the motor vehicle after the sale or
5 conditional sale.

6 (b) Includes any conditional sales contract or contract for the
7 bailment or leasing of a motor vehicle in which the bailee or lessee
8 agrees to pay for use of the motor vehicle and the bailee or lessee is
9 required to become or has the option of becoming the owner of the vehicle
10 for any or no compensation.

11 (c) Does not include any commercial transaction as defined in
12 section 44-291.

13 Sec. 2. Section 44-286, Arizona Revised Statutes, is amended to
14 read:

15 44-286. Requirements and prohibitions as to retail
16 installment contracts; secondary motor vehicle
17 finance transactions prohibited

18 A. A retail installment contract shall be in writing, shall be
19 signed by both the buyer and the seller and shall be completed as to all
20 essential provisions ~~prior to~~ BEFORE the signing of the contract by the
21 buyer. The printed portion of the contract, other than instructions for
22 completion, shall be in at least ~~eight-point~~ EIGHT-POINT type. The
23 contract shall contain in a size equal to at least ~~ten-point~~ TEN-POINT
24 bold type BOTH:

25 1. A specific statement that liability insurance coverage for
26 bodily injury and property damage caused to others is not included, if
27 that is the case. ~~; and~~

28 2. The following notice: "Notice to the buyer: 1. Do not sign
29 this contract before you read it or if it contains any blank
30 spaces. 2. You are entitled to an exact copy of the contract you sign."

31 B. The seller shall deliver to the buyer, or mail to ~~him~~ THE BUYER
32 at ~~his~~ THE address shown on the contract, a copy of the contract signed by
33 the seller. Until the seller does so, a buyer who has not received
34 delivery of the motor vehicle shall have the right to rescind ~~his~~ THE
35 BUYER'S agreement and to receive a refund of all payments made and return
36 of all goods traded in to the seller on account of or in contemplation of
37 the contract, or if the goods cannot be returned, the value thereof. Any
38 acknowledgment by the buyer of delivery of a copy of the contract shall be
39 in a size equal to at least ~~ten-point~~ TEN-POINT bold type, and, if
40 contained in the contract, shall appear directly above the buyer's
41 signature.

42 C. A PERSON, WHETHER LOCATED IN THIS STATE OR IN ANOTHER STATE, MAY
43 NOT MAKE, OFFER OR ARRANGE A SECONDARY MOTOR VEHICLE FINANCE TRANSACTION
44 TO OR WITH AN INDIVIDUAL IN THIS STATE. A TRANSACTION THAT IS MADE IN
45 VIOLATION OF THIS SUBSECTION IS VOID AS TO PRINCIPAL AND ALL CHARGES,

1 CONSTITUTES AN UNLAWFUL PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO
2 THE ENFORCEMENT PROCEDURES AND ALL PENALTIES UNDER CHAPTER 10, ARTICLE 7
3 OF THIS TITLE.

4 Sec. 3. Section 44-291, Arizona Revised Statutes, is amended to
5 read:

6 44-291. Computation of interest; prepayment rebate;
7 additional charges; definitions

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

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

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

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

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

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

17 ~~G. If the retail installment contract is a secondary motor vehicle~~
18 ~~finance transaction, the seller, bailor, lender or lessor shall determine~~
19 ~~the annual secondary motor vehicle finance rate and all charges relating~~
20 ~~to the sale, conditional sale, bailment or lease and repurchase of the~~
21 ~~vehicle. The seller, bailor, lender or lessor shall calculate the annual~~
22 ~~secondary motor vehicle finance rate by multiplying the monthly secondary~~
23 ~~motor vehicle finance rate by twelve. A retail installment contract that~~
24 ~~is a secondary motor vehicle finance transaction is subject to the~~
25 ~~following maximum finance rates on a secondary motor vehicle finance~~
26 ~~contract in the original principal amount of:~~

27 ~~1. Five hundred dollars or less, a monthly finance rate of~~
28 ~~seventeen per cent.~~

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

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

33 ~~4. More than five thousand dollars, a monthly finance rate of ten~~
34 ~~per cent.~~

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

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

5 J. G. For the purposes of this section:

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

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