

REFERENCE TITLE: motor vehicle title loans

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2611

Introduced by
Representatives Salman: Andrade, Cano, Hernandez M, Rodriguez, Stahl
Hamilton

AN ACT

AMENDING SECTION 44-281, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 2.1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 44-284; AMENDING SECTION 44-291, ARIZONA REVISED STATUTES; RELATING TO SECONDARY MOTOR VEHICLE FINANCE TRANSACTIONS.

(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 the financial
7 institutions division of the department of insurance and financial
8 institutions.

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

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

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

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

33 (a) Devices that move on or are guided by a track or travel through
34 the air.

35 (b) The following, if not designed primarily for highway
36 transportation, but that may incidentally be operated on a public 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 on the motor vehicle, which is the subject
7 matter of a retail installment transaction, is retained or taken by a
8 retail seller from a retail buyer as security for the buyer's obligation.

9 (b) Includes:

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

17 (ii) A secondary motor vehicle finance transaction.

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

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

30 11. "Sales finance company":

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

33 (b) Includes a person engaged, in whole or in part, in the business
34 of creating or holding retail installment contracts that exceed a total
35 aggregate outstanding indebtedness of \$50,000.

36 (c) Does not include:

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

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

42 12. "Secondary motor vehicle finance transaction" OR "MOTOR VEHICLE
43 TITLE LOAN":

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 (a) MEANS A NONPURCHASE CASH LOAN FOR UP TO \$5,000 THAT HAS A TERM
12 OF NOT MORE THAN FOUR YEARS AND THAT IS SECURED BY A CLEAR TITLE TO THE
13 BORROWER'S VEHICLE.

14 ~~(c)~~ (b) Does not include any commercial transaction as defined in
15 section 44-291.

16 Sec. 2. Title 44, chapter 2.1, article 1, Arizona Revised Statutes,
17 is amended by adding section 44-284, to read:

18 44-284. Motor vehicle title loan
19 A SECONDARY MOTOR VEHICLE TRANSACTION IS A MOTOR VEHICLE TITLE LOAN.

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

22 44-291. Computation of interest; prepayment rebate;
23 additional charges; secondary motor vehicle finance
24 transaction; definitions

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

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

1 subsection C of this section. The amount of ~~such~~ THAT rebate shall not be
2 computed pursuant to the method commonly known as the "rule of 78's". To
3 simplify the calculation of earned finance charge, it is permissible to
4 assume that all payments were made as originally scheduled or as otherwise
5 mutually agreed.

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

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

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

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

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

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

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

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

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

7 G. A PERSON, WHETHER LOCATED IN THIS STATE OR IN ANOTHER STATE, MAY
8 NOT ENGAGE IN THE BUSINESS OF LENDING MONIES AS MOTOR VEHICLE TITLE LOANS
9 WITHOUT FIRST BEING LICENSED AS A SALES FINANCE COMPANY UNDER THIS ARTICLE
10 UNLESS THE PERSON IS EXEMPT UNDER SECTION 6-602 OR IS LICENSED AS A
11 CONSUMER LENDER UNDER SECTION 6-603.

12 H. IF THE RETAIL INSTALLMENT CONTRACT IS A MOTOR VEHICLE TITLE
13 LOAN:

14 1. A LICENSED SALES FINANCE COMPANY MAY NOT CONTRACT FOR OR RECEIVE
15 INTEREST, FEES AND CHARGES EXCEEDING AN ANNUAL RATE OF THIRTY-SIX PERCENT,
16 INCLUDING ALL CHARGES FOR ANY ANCILLARY PRODUCT OR SERVICE AND ANY OTHER
17 CHARGE OR FEE INCIDENT TO A MOTOR VEHICLE TITLE LOAN.

18 2. THE NOTE EVIDENCING A MOTOR VEHICLE TITLE LOAN SHALL PROVIDE FOR
19 THE SCHEDULED REPAYMENT OF PRINCIPAL AND CHARGES IN APPROXIMATELY EQUAL
20 PERIODIC INSTALLMENTS.

21 3. A MOTOR VEHICLE TITLE LOAN SHALL BE SECURED BY FILING A LIEN ON
22 ALL TITLES USED.

23 4. A LOAN MAY NOT BE CONSIDERED SECURED BY A BORROWER'S VEHICLE
24 UNLESS THE BORROWER HOLDS A CLEAR TITLE.

25 5. NO OTHER FORM OF SECURITY MAY BE TAKEN TO SECURE A MOTOR VEHICLE
26 TITLE LOAN, INCLUDING ACCESS TO THE BORROWER'S DEPOSIT ACCOUNT OR A
27 PREPAID DEBIT CARD THAT ACCEPTS DEPOSITS OF INCOME OR WAGES.

28 6. THE LICENSED SALES FINANCE COMPANY SHALL RELEASE ANY LIEN ON A
29 VEHICLE TITLE THAT SECURES A MOTOR VEHICLE TITLE LOAN AND THAT IS PAID IN
30 FULL AND SHALL COMPLY WITH TITLE 47, CHAPTER 9, ARTICLE 6.

31 7. THE AGREEMENT EVIDENCING THE MOTOR VEHICLE TITLE LOAN MAY NOT
32 CONTAIN BALLOON PAYMENTS, PREPAYMENT PENALTIES, CALL OPTIONS AND OTHER
33 CONTRACT PROVISIONS THAT ALLOW A MOTOR VEHICLE TITLE LENDER TO ACCELERATE
34 PAYMENT OF A MOTOR VEHICLE TITLE LOAN FOR ANY REASON OTHER THAN THE
35 BORROWER'S DEFAULT.

36 8. A LICENSED SALES FINANCE COMPANY MAY NOT ENGAGE IN ANY DEVICE,
37 SUBTERFUGE OR PRETENSE TO EVADE THE REQUIREMENTS OF THIS SUBSECTION,
38 INCLUDING:

39 (a) MAKING LOANS DISGUISED AS A PERSONAL PROPERTY SALE AND
40 LEASEBACK TRANSACTION.

41 (b) USING ANY PRETEXT OR DISGUISED LOAN PROCEEDS AS A CASH REBATE
42 FOR THE INSTALLMENT SALE OF GOODS OR SERVICES.

43 (c) MAKING, OFFERING, ASSISTING WITH OR ARRANGING FOR A BORROWER TO
44 OBTAIN A LOAN WITH A GREATER RATE OF INTEREST, CONSIDERATION OR CHARGE
45 THAN IS ALLOWED BY THIS ARTICLE THROUGH ANY METHOD, INCLUDING ANY METHOD

1 PRESCRIBED IN TITLE 6, CHAPTER 13 OR CHAPTER 11, ARTICLE 7 OF THIS TITLE
2 OR BY MAIL, TELEPHONE, INTERNET OR ANY ELECTRONIC MEANS REGARDLESS OF
3 WHETHER THE SALES FINANCE COMPANY HAS A PHYSICAL LOCATION IN THIS STATE.

4 9. A PERSON MAY NOT MAKE, OFFER OR ARRANGE THE MOTOR VEHICLE TITLE
5 LOAN FOR MORE THAN \$5,000 OR FOR A TERM OF MORE THAN FOUR YEARS.

6 I. A LOAN THAT IS MADE IN VIOLATION OF SUBSECTION G OR H OF THIS
7 SECTION IS VOID AND UNCOLLECTIBLE AS TO ANY PRINCIPAL, FEE, INTEREST OR
8 CHARGE.

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

20 K. A VIOLATION OF SUBSECTION G OR H OF THIS SECTION IS AN UNLAWFUL
21 PRACTICE UNDER SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND
22 TAKE APPROPRIATE ACTION AS PRESCRIBED BY CHAPTER 10, ARTICLE 7 OF THIS
23 TITLE.

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

29 ~~J.~~ M. For the purposes of this section:

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

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

37 Sec. 4. Savings clause

38 This act does not affect rights and duties that matured, penalties
39 that were incurred and proceedings that were begun before the effective
40 date of this act.

1 Sec. 5. Severability

2 If a provision of this act or its application to any person or
3 circumstance is held invalid, the invalidity does not affect other
4 provisions or applications of the act that can be given effect without the
5 invalid provision or application, and to this end the provisions of this
6 act are severable.

7 Sec. 6. Short title

8 Title 44, chapter 2.1, article 1, Arizona Revised Statutes, as
9 amended by this act, may be cited as the "Arizona Fair Lending Act".