

MAINE STATE LEGISLATURE

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N I N E T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 1421

H. P. 993

House of Representatives, March 27, 1957.

Referred to Committee on Business Legislation. Sent up for concurrence and 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Wade of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FIFTY-SEVEN

AN ACT Relating to Sales Financing of Motor Vehicles.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., c. 59, §§ 249-260, additional. Chapter 59 of the Revised Statutes is hereby amended by adding thereto 12 new sections to be numbered 249 to 260, inclusive, to read as follows:

‘Motor Vehicle Sales Finance Act.

Sec. 249. Definition of terms. In sections 249 to 259, inclusive, unless the context or subject matter otherwise requires:

“Cash sale price” means the price stated in a retail instalment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail instalment contract, if such sale had been a sale for cash instead of a retail instalment transaction. The cash sale price may include any taxes, registration, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle.

“Documentary fees” mean the fees for filing, recording or investigating, perfecting and releasing or satisfying a retained title or a lien created by a retail instalment contract, and shall not exceed \$4.

“Finance charge” means the amount agreed upon between the buyer and the seller, as limited in sections 249 to 259, inclusive, to be added to the cash sale price, the amount, if any, included for insurance and other benefits, if a separate change is made therefore, and documentary fees, in determining the time price.

The "holder" of a retail instalment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

"Motor vehicle" means any device propelled or drawn by any power other than muscular power, in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting power shovels, road machinery, buses, agricultural machinery and house trailers.

"Person" means an individual, partnership, corporation, association and any other group however organized.

"Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller and who executes a retail instalment contract in connection therewith.

"Retail instalment contract" or "contract" means an agreement, entered into in this State, pursuant to which the title to, the property in or a lien upon the motor vehicle, which is the subject matter of a retail instalment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract, a Holmes note and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

"Retail instalment transaction" means any transaction evidenced by a retail instalment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred instalments for purposes other than resale. The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, documentary fees and the finance charge, which may include insurance and other benefits, shall together constitute the time price.

"Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer under or subject to a retail instalment contract.

"Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail instalment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, finance company, lending agency, industrial bank or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of creating or holding retail instalment contracts. The term does not include the pledgee of an aggregate number of such contracts to secure a bona fide loan thereon.

Sec. 250. Licensing of sales finance companies required.

I. No person shall engage in the business of a sales finance company in this State without a license therefor as provided in sections 249 to 259, inclusive.

No bank, trust company or industrial bank shall be required to obtain such a license but shall comply with all of the other provisions of sections 249 to 259, inclusive.

II. The application for such license shall be in writing, under oath and in the form prescribed by the Bank Commissioner. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers, the trade name, if any, under which the applicant proposes to conduct such business, and such other pertinent information as the Bank Commissioner may require.

III. The license fee for each calendar year or part thereof shall be the sum of \$10 for the principal place of business of the licensee and the sum of \$5 for each branch of the licensee maintained in this State.

IV. Each license shall specify the location of the office or branch and must be conspicuously displayed there. In case such location be changed, the Bank Commissioner shall endorse the change of location on the license without charge.

V. Upon the filing of such application and the payment of said fee, the Bank Commissioner shall issue a license to the applicant to engage in the business of a sales finance company under and in accordance with the provisions of sections 249 to 259, inclusive, for a period which shall expire the last day of December next following the date of its issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by sections 249 to 259, inclusive, under any other trade names unless he shall have a separate license therefor.

Sec. 251. Suspension or revocation of licenses.

I. A license may be suspended or revoked by the Bank Commissioner on the following grounds:

A. Material misstatement in application for license;

B. Wilful failure to comply with any provision of sections 249 to 259, inclusive, relating to retail instalment contracts;

C. 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 the provisions of sections 249 to 259, inclusive.

II. If a licensee is a partnership, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed association or corporation or any member of a licensed partnership, has so acted or failed to act in behalf of said licensee as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his employees while acting as his agent, if such licensee after actual knowledge of

said acts retained the benefits, proceeds, profits or advantages accruing from said acts or otherwise ratified said acts.

III. No license shall be suspended or revoked except after hearing thereon. The Bank Commissioner shall give the licensee at least 10 days written notice, in the form of an order to show cause, of the time and place of such hearing by registered mail addressed to the principal place of business in this State of such licensee. The said notice shall specify the grounds of complaint against the licensee and the hearing shall be confined thereto. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the Bank Commissioner and shall not be effective until after 30 days written notice thereof given after such entry forwarded by registered or certified mail to the licensee at such principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail instalment contract acquired previously thereto by the licensee.

IV. Within 30 days after receipt of notice of any such suspension or revocation of a license, the person aggrieved may appeal therefrom to any Justice of the Superior Court by presenting to him a petition therefor, in term time or vacation. Such Justice shall fix a time and place for hearing which may be in vacation and cause notice thereof to be given to the Bank Commissioner; and after hearing such Justice may affirm or reverse the decision of the Bank Commissioner. Either party may file exceptions to the decisions and rulings of the Court upon matters of law arising upon the trial, in the same manner and with the same effect as is allowed in the Superior Court in the trial of case without a jury, without specifically reserving such right to except. Pending final judgment of the Court, the license shall remain in effect.

Sec. 252. Filing of complaints. Any retail buyer having reason to believe that the provisions of sections 249 to 259, inclusive, relating to his retail instalment contract has been violated may file with the Bank Commissioner a written complaint setting forth the details of such alleged violation and the Bank Commissioner upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint. Said Commissioner may also make inspections of the records of sales finance companies without the receipt of a specific complaint for any reasonable cause.

Sec. 253. Powers of Bank Commissioner. The Bank Commissioner shall have the power to issue subpoena to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pertaining to the provisions of sections 249 to 259, inclusive. He shall have the power to administer oaths and affirmation to any person whose testimony is required.

If any person shall refuse to obey any such subpoena or to give testimony or to produce evidence as required thereby, any Justice of the Superior Court may, upon application and proof of such refusal, order the issuance of a subpoena, or subpoena duces tecum, out of the Superior Court, for the witness to appear before the Superior Court to give testimony, and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the Superior Court,

the clerk shall issue such subpoena, as directed, requiring the person to whom it is directed, to appear at the time and place therein designated.

If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the Bank Commissioner may apply to any Justice of the Superior Court for a proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and upon his being brought before such Justice, proceed to a hearing of the case. The Justice shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine not exceeding \$100 or by imprisonment in the county jail, or by both.

For the enforcement of the provisions of sections 249 to 259, inclusive, the Bank Commissioner is authorized to appoint, subject to the provisions of the Personnel Law, such personnel as are necessary. The salary, traveling expenses and all expenses of administration and enforcement of the provisions of sections 249 to 259, inclusive, shall be paid out of such amounts as the Legislature may appropriate. Fees received from licenses issued under the provisions of sections 249 to 259, inclusive, shall be paid to the Treasurer of State for deposit in the general fund.

Sec. 254. Requirements and prohibitions as to retail instalment contracts.

I.

A. A retail instalment contract shall be in writing, shall be signed by both the buyer and the seller and shall be completed as to all essential provisions or by memorandum as provided in subsection VI prior to the signing of the contract by the buyer.

B. The printed portion of the contract, other than instructions for completion, shall be in at least 8 point type. The contract shall contain in a size equal to at least 10 point bold type:

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

2. The following notice: "Notice to the Buyer: 1. Read this contract before signing. 2. You are entitled to an exact copy of the contract you sign."

C. The seller shall deliver to the buyer or mail to him at his address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind his agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10 point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

D. The contract shall contain the names of the seller and the buyer, the place of business of the seller, the legal residence or place of business of

the buyer as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks.

II. The contract shall contain the following:

- A. The cash sale price of the motor vehicle;
- B. The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods;
- C. The difference between items A and B;
- D. The amount, if any, included for insurance and other benefits specifying the types of coverage and benefits, unless such amount is included in the finance charge;
- E. The amount of documentary fees;
- F. The principal balance, which is the sum of paragraph C, paragraph D and paragraph E;
- G. The amount of the finance charge and specification of the type of insurance coverage and benefits, if included therein;
- H. The time balance, which is the sum of paragraphs F and G, payable in instalments by the buyer to the seller, the number of instalments, the amount of each installment and the due date or period thereof.

The above paragraphs in subsection II need not be stated in the sequence or order set forth. Additional paragraphs may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

III. The amount, if any, included for insurance, which may be purchased by the holder of the retail instalment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the Insurance Commissioner. If dual interest insurance on the motor vehicle is purchased by the holder he shall, within 30 days after execution of the retail instalment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insurance premium in the retail instalment contract shall be optional with the seller.

IV. If any insurance is cancelled, unearned insurance premium refunds received by the holder shall be credited to the final maturing instalments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

V. The holder may, if the contract so provides, collect a delinquency and collection charge on each instalment in default for a period not less than 10 days in an amount not in excess of 5% of each instalment or 6% per annum on the total unpaid balance, whichever is greater. In addition to such delinquency and collection charge, the contract may provide for the payment of

reasonable attorneys' fees where such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs.

VI. No retail instalment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information, and the due date of the first instalment may be inserted in the contract after its execution; and except that said contract may be so signed provided the buyer is given at the time of such execution a bill of sale, invoice or similar memorandum clearly indicating the sales price, down payment, type or types of insurance coverage and the number, period and amount of payments; and provided said contract when completed conforms with said bill of sale, invoice or memorandum, and a copy of said contract is delivered to said buyer. The instrument for recording purposes shall be the contract, or a memorandum thereof, as provided by the recording provisions of the Revised Statutes. The buyer's written acknowledgment, conforming to the requirements of paragraph C of subsection I, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as provided, and of compliance with this section in any action or proceeding by or against the seller or the holder of the contract.

VII. Upon written request from the buyer at reasonable intervals, the holder of a retail instalment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written or stamped receipt for any payment when made in cash.

VIII. No provision in a retail instalment contract relieving the seller from liability for any legal remedies which the buyer may have under the provisions of sections 249 to 259, inclusive, against the seller under the contract, or any separate instrument executed in connection therewith, shall be enforceable.

Sec. 255. Finance charge limitation.

I. Notwithstanding the provisions of any other law, the finance charge shall not exceed the following rates:

Group 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made, \$7 per \$100 per year.

Group 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 3 years prior to the year in which the sale is made, \$11 per \$100 per year.

Group 3. Any used motor vehicle not in class 2, \$15 per \$100 per year.

II. Such finance charge shall be computed on the principal balance as determined under subsection II of section 254 on contracts payable in successive monthly payments substantially equal in amount. Such finance charge may be computed on the basis of a full month for any fractional month period in excess of 10 days. A minimum finance charge of \$25 may be charged on any retail instalment transaction.

III. When a retail instalment contract provides for unequal or irregular instalment payments, the finance charge may be at the effective rates permitted in subsection I, having due regard for the schedule of payments.

IV. 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 upon 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 shall not be 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 thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

Sec. 256. Credit upon anticipation of payments. Notwithstanding the provisions of any retail instalment contract to the contrary, any buyer may pay in full at any time before maturity the debt of any retail instalment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge after first deducting from such finance charge an acquisition cost of \$25, as the sum of the monthly time balances after the month in which prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract. Where the amount of credit is less than \$1 no refund need be made.

Sec. 257. Extending retail instalment contract. If the holder of a contract, at the request of the buyer, extends the scheduled due date of all or any part of any instalment or instalments, the holder may collect for such extension not more than \$5 in addition to 1% per month simple interest on the respective descending balances computed on the amount and for the period of such extension or renewal.

Sec. 258. Penalties.

I. Any person who shall willfully and intentionally violate any provisions of sections 249 to 259, inclusive, or engage in the business of a sales finance company in this State without a license therefor as provided in sections 249 to 259, inclusive, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$500.

II. Any person willfully violating the provisions of sections 254 or 255 shall be barred from recovering any finance charge, delinquency or collection charge on the contract.

Sec. 259. Waiver. Any waiver of the provisions of sections 249 to 259, inclusive shall be unenforceable and void.

Sec. 260. Short title. Sections 249 to 259, inclusive, may be cited as "The Motor Vehicle Sales Finance Act."

Sec. 2. R. S., c. 60, §§ 305-306, repealed. Section 305 and 306 of chapter 60 of the Revised Statutes is hereby repealed.

Sec. 3. Effective date. This act shall become effective September 1, 1957.