

## 1 HOUSE BILL NO. 63

2 INTRODUCED BY POMNICHOWSKI

3 BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA RETAIL INSTALLMENT  
6 SALES ACT; REVISING DEFINITIONS; PROVIDING FOR NOTICE AND OPPORTUNITY FOR HEARING;  
7 ADDING PENALTIES FOR VIOLATIONS; ELIMINATING REQUIREMENTS THAT COPIES OF ALL RULES  
8 MUST BE MAILED TO LICENSEES; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING  
9 LICENSE DENIAL REQUIREMENTS; REVISING CONTRACT DISCLOSURE REQUIREMENTS; CLARIFYING  
10 DELINQUENCY FEES AND CHARGES; REQUIRING SELLERS TO GIVE 45 DAYS' NOTICE PRIOR TO  
11 CHANGING TERMS OF REVOLVING CHARGE ACCOUNTS; REVISING PROVISIONS ON PREPAYMENT  
12 REFUNDS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE  
13 LICENSING SYSTEM FOR PURPOSES OF LICENSING SALES FINANCE COMPANIES; GRANTING  
14 ADDITIONAL RULEMAKING AUTHORITY; AND AMENDING SECTIONS 31-1-202, 31-1-203, 31-1-211,  
15 31-1-221, 31-1-222, 31-1-231, 31-1-232, 31-1-235, 31-1-236, 31-1-241, AND 31-1-242, MCA."

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18

19 **Section 1.** Section 31-1-202, MCA, is amended to read:20 **"31-1-202. Definitions -- scope.** (1) Unless the context requires otherwise, in this part the following  
21 definitions apply:22 (a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other  
23 memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account  
24 agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or  
25 obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if  
26 the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title,  
27 license, and official fees and cash sale prices for services, if any, and for accessories and their installation and  
28 for delivering, servicing, repairing, or improving the goods.29 (b) "CONSPICUOUS" MEANS THAT:30 (i) A HEADING IS IN CAPITAL LETTERS EQUAL TO OR GREATER IN SIZE THAN THE SURROUNDING TEXT OR IN

1 CONTRASTING TYPE, FONT, OR COLOR THAN THE SURROUNDING TEXT OF THE SAME OR LESSER SIZE; OR

2 (II) LANGUAGE IN THE BODY OF A RECORD OR DISPLAY IS IN LARGER TYPE THAN THE SURROUNDING TEXT, IS IN

3 CONTRASTING TYPE, FONT, OR COLOR THAN THE SURROUNDING TEXT OF THE SAME SIZE, OR IS SET OFF FROM THE

4 SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS THAT CALL ATTENTION TO THE LANGUAGE.

5 ~~(b)~~(C) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

6 ~~(c)~~(D) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance,  
7 agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or  
8 services to be paid for by the buyer in one or more deferred installments.

9 ~~(d)~~(E) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or  
10 coupons exchangeable for chattels personal but not including money, things in action, or dwellings as defined  
11 in 15 U.S.C. ~~4602(v)~~ 1602(w).

12 ~~(e)~~(F) "Holder" means:

13 (i) the retail seller of the goods or services under the retail installment contract or retail charge account  
14 agreement or a person who establishes and administers retail charge account agreements with retail buyers;

15 (ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance  
16 in the account under either has been sold or otherwise transferred; or

17 (iii) any other person entitled to the rights of the retail seller under any retail installment contract or any  
18 retail charge account agreement.

19 ~~(f)~~(G) "Manufactured structure" means any structure, transportable in one or more sections, designed  
20 to be used as a single-family dwelling or commercial building with or without a permanent foundation when  
21 connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems  
22 contained in the structure.

23 ~~(g)~~(H) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer,  
24 semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used  
25 to transport persons or property on a public highway.

26 (ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

27 (iii) The term does not include a dwelling as defined in 15 U.S.C. ~~4602(v)~~ 1602(w).

28 ~~(h)~~(I) "Official fees" means:

29 (i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any  
30 title or lien retained or taken by a seller in connection with a retail installment transaction; or

1 (ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained  
2 or taken by a seller in connection with a retail installment transaction to the extent that the premium does not  
3 exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or  
4 satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

5 ~~(j)~~(J) "Person" means an individual, partnership, corporation, association, and any other group, however  
6 organized.

7 ~~(j)~~(K) "Principal balance" means the cash sale price of the goods or services that are the subject matter  
8 of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is  
9 made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the  
10 buyer's downpayment in money or goods.

11 ~~(k)~~(L) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is  
12 mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational,  
13 camping, or travel use.

14 ~~(h)~~(M) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller  
15 in a retail installment transaction and not for the purpose of resale.

16 ~~(m)~~(N) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail  
17 installment transactions that may be made under it from time to time under which a retail seller gives to a retail  
18 buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation  
19 or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and  
20 any other person, or from a person licensed or franchised by the retail seller and under the terms of which a  
21 finance charge may be computed in relation to the buyer's average daily balance in the account during the billing  
22 cycle or the buyer's balance from time to time.

23 ~~(n)~~(O) "Retail installment contract" or "contract" means an agreement evidencing a retail installment  
24 transaction entered into in this state under which a buyer promises to pay in one or more deferred installments  
25 the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales  
26 contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as  
27 compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that  
28 the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of  
29 becoming, the owner of the goods upon full compliance with the provisions of the contract.

30 ~~(o)~~(P) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing

1 of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under  
2 a retail installment contract.

3 ~~(p)~~(Q) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer  
4 in a written retail installment contract or written retail installment transaction.

5 ~~(q)~~(R) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of  
6 purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank,  
7 trust company, investment company, credit union, or savings and loan association, if engaged in purchasing retail  
8 installment contracts.

9 (ii) The term does not include a person who makes only isolated purchases of retail installment contracts  
10 that are not being made in the course of repeated and successive purchases of retail installment contracts from  
11 the same seller.

12 ~~(r)~~(S) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair,  
13 or improvement of goods.

14 ~~(s)~~(T) "Time sale price" means the total of the cash sale price of the goods or services and the amount,  
15 if any, included for insurance and other benefits, if a separate identified charge is made for insurance and  
16 benefits, and the amounts of the official fees and the finance charge.

17 (2) (a) This part does not apply to the lending of money by banks or other lending institutions and  
18 securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending  
19 institutions.

20 (b) This part applies to the extension of credit by those banks or other lending institutions under retail  
21 installment contracts or credit cards issued by those banks or other lending institutions.

22 (c) This part does not apply to a transaction governed by Title 32, chapter 9, part 1."  
23

24 **Section 2.** Section 31-1-203, MCA, is amended to read:

25 **"31-1-203. Penalties -- prohibited activities Notice and opportunity for hearing -- service --**  
26 **penalties -- exception.** (1) ~~Any person who knowingly violates a provision of this part or engages in the business~~  
27 ~~of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and~~  
28 ~~upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6~~  
29 ~~months, or both. The department shall provide a 14-day written notice of alleged violations of this part and~~  
30 ~~opportunity for an administrative hearing under the Montana Administrative Procedure Act. The notice must be~~

1 based on reasonable cause to believe that a licensee or any person, whether licensed or not, has:

2 (a) violated any of the provisions of this part;

3 (b) failed to comply with the rules or orders promulgated by the department;

4 (c) furnished false information to the department; or

5 (d) operated without a required license.

6 (2) The department may impose a civil penalty not to exceed \$1,000 for each violation and may require  
7 restitution to buyers and reimbursement of the department's costs in bringing an administrative action.

8 (3) The department may suspend, revoke, or condition the license of a person violating this part. The  
9 suspension, revocation, or conditioning of a license does not affect the rights and obligations of the parties to  
10 retail installment contracts acquired previously by the licensee. If a licensee is a legal entity, it is sufficient cause  
11 for the suspension, revocation, or conditioning of a license that any officer, director, or trustee of a licensed  
12 association or corporation, any member or manager of a licensed limited liability company, or any partner of a  
13 licensed partnership has acted or failed to act so as to provide cause for suspending, revoking, or conditioning  
14 a license. Each licensee is responsible for the acts of the licensee's employees and agents acting within the  
15 course and scope of their employment or agency relationship with the licensee.

16 ~~(2)(4) In addition to other penalties provided by law, any~~ Any person violating 31-1-231 through 31-1-243,  
17 except as the result of an isolated accidental and bona fide error of computation, ~~shall be~~ is barred from recovery  
18 of any finance, delinquency, or collection charge on the contract. A person violating 31-1-231 through 31-1-243  
19 as a result of an isolated accidental and bona fide error of computation may not recover or retain any overcharge  
20 resulting from the error. Systemic errors of computation attributable to software or other causes and repeated  
21 computation errors of the same type are not isolated accidental and bona fide errors of computation.

22 (5) In addition to other penalties provided by law, a violation of subsection (3) this part and a contract  
23 made in violation of the finance charge limitations imposed by 31-1-241 is a violation of Title 30, chapter 14, part  
24 1.

25 ~~(3) A person may not engage in any device or subterfuge intended to evade the requirements of this~~  
26 ~~chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making~~  
27 ~~loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash~~  
28 ~~rebates for the pretextual installment sale of goods or services.~~

29 (6) All notices, hearing schedules, and orders must be mailed by certified mail to the licensee's Montana  
30 address of record with the department or in the case of an unlicensed person to the last address known to the

1 department. For licensees authorized to do business in this state and having no physical business location or  
2 address in this state, service of process must be made by certified mail upon the licensee's registered agent of  
3 record with the secretary of state, and subsequent hearing schedules and orders must be mailed by certified mail  
4 to the licensee's out-of-state address of record with the department."

5

6 **Section 3.** Section 31-1-211, MCA, is amended to read:

7 **"31-1-211. Powers of department.** (1) The department may adopt rules necessary to carry out the  
8 intent and purposes of this part. ~~All rules of general application must be filed in the office of the department. A~~  
9 ~~copy of every rule must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective~~  
10 ~~date. However, the failure of a licensee to receive a copy of the rules does not exempt the licensee from the duty~~  
11 ~~of compliance with those rules lawfully adopted under the provisions of this section.~~

12 (2) The department may issue subpoenas to compel the attendance of witnesses and the production  
13 of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction,  
14 control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person  
15 whose testimony is required.

16 (3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it,  
17 a judge of the district court of the county in which the licensed premises are located may, upon application and  
18 proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department  
19 to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena,  
20 as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place  
21 designated in it.

22 (4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as  
23 required by the subpoena, the department may apply to the judge of the court issuing the subpoena for an arrest  
24 warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest  
25 warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon that person  
26 being brought before the judge, proceed to a hearing of the case. The judge may compel:

27 (a) obedience to the subpoena;

28 (b) the answering of any question;

29 (c) the production of any evidence that may be proper; or

30 (d) the witness to pay the costs of the proceeding.

1 (5) Failure to comply with the requirements of subsection (4)(a), (4)(b), or (4)(c) is punishable by a fine  
2 not exceeding \$100 or by imprisonment in the county jail, or both."

3

4 **Section 4.** Section 31-1-221, MCA, is amended to read:

5 **"31-1-221. Licensing of sales finance companies required.** (1) A person may not engage in the  
6 business of a sales finance company, including the purchase of retail installment contracts that are entered into  
7 in this state, without a license as provided in this part, except that a bank, trust company, or savings and loan  
8 association, or credit union authorized to do business in this state is not required to obtain a license under this  
9 part but shall comply with all of the other provisions of this part.

10 (2) The application for a license must be in writing, ~~under oath, and in the form prescribed by~~ in the form  
11 and submitted in the manner that the department may direct. ~~The application must contain:~~

12 ~~—— (a) the name of the applicant;~~

13 ~~—— (b) the date of incorporation, if incorporated;~~

14 ~~—— (c) the address where the business is or is to be conducted and similar information with regard to any~~  
15 ~~branch office of the applicant;~~

16 ~~—— (d) the name and resident address of the owner or partners or, if a corporation or association, of the~~  
17 ~~directors, trustees, and principal officers; and~~

18 ~~—— (e) other pertinent information as the department may require.~~

19 (3) The license fee for each calendar year or part of a year is \$100 for ~~each place of business of the~~  
20 ~~licensee in this state~~ the applicant's principal place of business and for each additional branch location at which  
21 the applicant engages in sales finance company activities concerning retail installment contracts between retail  
22 sellers and buyers in this state. A licensee need not maintain a physical place of business within this state.

23 ~~(4) Each license must specify the location of the office or branch and must be conspicuously displayed~~  
24 ~~there. If the location is changed, the department shall endorse the change of location of the license without~~  
25 ~~charge.~~

26 ~~(5)(4) Except as provided in 31-1-222, upon the submission of a complete~~ Upon the filing of a license  
27 application and the payment of the license fee required fees, the department shall issue a license to the applicant  
28 to engage in the business of a sales finance company in accordance with the provisions of this part for a period  
29 that expires December 31 following the date of the license's issuance. The license is not transferable or  
30 assignable. A licensee may not transact any business provided for by this part under any other name.

1           ~~(6)(5)~~ The department may direct that fees chargeable under subsection (3) be remitted to the  
 2 department through a nationwide licensing system. The department's portion of fees charged and Fees collected  
 3 under this chapter must be deposited in the state special revenue fund for the use of the department in its  
 4 supervision function."

5  
 6           **Section 5.** Section 31-1-222, MCA, is amended to read:

7           "**31-1-222. Denial, ~~suspension, or revocation~~ of licenses.** ~~(1)~~ Subject to the notice and opportunity  
 8 for hearing provisions of 31-1-203, initial licensure or license renewal ~~Renewal of a license originally granted~~  
 9 ~~under 31-1-224~~ may be denied or a license may be suspended or revoked by the department on the following  
 10 grounds:

11           ~~(a)~~ (1) material misstatement of fact or material omission of fact in the application for license or renewal;

12           (2) a civil judgment against the applicant for defrauding a retail buyer in relation to financing terms of a  
 13 retail installment contract; or

14           (3) having had a sales finance company license or other financial services license revoked by a  
 15 regulatory agency in any jurisdiction.

16           ~~(b) willful failure to comply with any provision of this part relating to retail installment contracts;~~

17           ~~—— (c) defrauding any retail buyer to the buyer's damage;~~

18           ~~—— (d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or~~  
 19 ~~device of any of the material particulars or the nature of those particulars required to be stated or furnished to the~~  
 20 ~~retail buyer under this part.~~

21           ~~—— (2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or~~  
 22 ~~revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member~~  
 23 ~~of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license~~  
 24 ~~to that party as an individual. Each licensee is responsible for the acts of the licensee's employees while acting~~  
 25 ~~as the licensee's agent if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits,~~  
 26 ~~or advantage accruing from the acts or otherwise ratified the acts.~~

27           ~~—— (3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall~~  
 28 ~~give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of~~  
 29 ~~the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice must~~  
 30 ~~contain the grounds of complaint against the licensee.~~



1 ~~\_\_\_\_\_ (b) An order suspending or revoking a license must recite the grounds upon which it is based. The order~~  
 2 ~~must be entered upon the records of the department and is not effective until 30 days after written notice has~~  
 3 ~~been forwarded by certified mail to the licensee at the licensee's principal place of business.~~

4 ~~\_\_\_\_\_ (c) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a lawful~~  
 5 ~~retail installment contract acquired previously by the licensee."~~

6

7 **Section 6.** Section 31-1-231, MCA, is amended to read:

8 **"31-1-231. Requirements of retail installment contracts.** (1) Each retail installment contract must be  
 9 in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing  
 10 of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor  
 11 vehicle where title, lien, or other security interest is not retained or taken by the seller, then the retail installment  
 12 contract is not required to be contained in a single document. In that case, if the contract is contained in more  
 13 than one document, then one document may be an original document executed by the retail buyer applicable to  
 14 purchases of goods or services to be made by the retail buyer from time to time, and in that case the document,  
 15 together with the sales slip, account book, or other written statement relating to each purchase, must set forth  
 16 all of the information required by this section and constitutes the retail installment contract for each purchase.

17 (2) The printed portion of the contract, other than instructions for completion, must be in at least 8-point  
 18 type. The contract must conspicuously disclose ~~contain~~ the following notice ~~in a size equal to at least 10-point~~  
 19 ~~bold type:~~

20 "1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces other  
 21 than blank spaces for the serial number of the goods or other similar information and the due date of the first  
 22 installment if the goods have not been delivered to you at the time you sign the contract.

23 2. You are entitled to an exact copy of the contract ~~you sign~~ bearing your signature.

24 3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial  
 25 refund of the finance charge.

26 ~~\_\_\_\_\_ 4. You have a right to rescind the contract until you have received the goods or been furnished the~~  
 27 ~~services contracted for and the seller signs the contract and either:~~

28 ~~\_\_\_\_\_ a. mails to you at your address in the contract a copy of the contract bearing the seller's signature; or~~

29 ~~\_\_\_\_\_ b. personally delivers to you a copy of the contract bearing the seller's signature and obtains your~~  
 30 ~~acknowledgment of delivery. If contained in the contract, the acknowledgment by you of personal delivery of a~~

1 ~~copy of the contract signed by the seller must be conspicuous and must appear directly above your signature;~~

2 ~~5. If you rescind the contract, you have a right to receive a refund of all payments made and a right to~~

3 ~~the return of all goods traded in to the seller on account of or in contemplation of the contract or, if the goods~~

4 ~~cannot be returned, the value of the goods."~~

5 (3) If the contract covers the sale of a motor vehicle, it must also contain, ~~in a size equal to at least~~  
6 ~~40-point bold type~~, a specific statement that is conspicuously disclosed that liability insurance coverage for bodily  
7 injury and property damage caused to others is not included if that is the case.

8 (4) The contract must contain the names of the seller and the buyer, the place of business of the seller,  
9 the residence or place of business of the buyer as specified by the buyer, and a description of the goods sold or  
10 services furnished or to be furnished and must clearly state and describe any collateral security taken for the  
11 buyer's obligation.

12 (5) The contract must contain the following items:

13 (a) the cash sale price of the goods or services;

14 (b) the amount of the buyer's downpayment and whether made in money or goods or partly in money  
15 and partly in goods, including a brief description of the goods traded in;

16 (c) the difference between items in subsections (5)(a) and (5)(b);

17 (d) the amount, if any, included for insurance and other benefits if a separate charge is made for  
18 insurance and other benefits, specifying the types of coverage and benefits;

19 (e) the amount of official fees;

20 (f) the principal balance, which is the sum of items in subsections (5)(c) through (5)(e);

21 (g) the amount of the finance charge;

22 (h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of  
23 items in subsections (5)(f) and (5)(g), payable in installments by the buyer to the seller;

24 (i) the number of installments;

25 (j) the amount of each installment; and

26 (k) the due date or period of installments.

27 (6) The items in subsection (5) need not be stated in the sequence or order set forth, and additional items  
28 may be included to explain the computations made in determining the amount to be paid by the buyer.

29 (7) A retail installment contract may not be signed by any party when it contains blank spaces to be filled  
30 in after it has been signed, except that if delivery of the goods is not made at the time of the ~~execution~~ signing

1 of the contract, the ~~identifying numbers or marks~~ serial number of the goods or similar information and the due  
 2 date of the first installment may be inserted in the contract after ~~its execution~~ it is signed. THE BUYER'S WRITTEN  
 3 ACKNOWLEDGMENT, CONFORMING TO THE REQUIREMENTS OF 31-1-232, OF DELIVERY OF A COPY OF A CONTRACT, IN ANY  
 4 ACTION OR PROCEEDING BY OR AGAINST A HOLDER OF THE CONTRACT WITHOUT KNOWLEDGE TO THE CONTRARY WHEN  
 5 THE HOLDER PURCHASES THE CONTRACT, MUST BE CONCLUSIVE PROOF:

6 (A) OF THE DELIVERY;

7 (B) THAT THE CONTRACT WHEN SIGNED DID NOT CONTAIN ANY BLANK SPACES EXCEPT AS PROVIDED IN THIS  
 8 SUBSECTION (7); AND

9 (C) OF COMPLIANCE WITH 31-1-231 THROUGH 31-1-236. ~~The buyer's written acknowledgment, conforming~~  
 10 ~~to the requirements of 31-1-232, of delivery of a copy of a contract must, in any action or proceeding by or against~~  
 11 ~~a holder of the contract without knowledge to the contrary when the holder purchases the contract, be conclusive~~  
 12 ~~proof:~~

13 ~~—— (a) of the delivery;~~

14 ~~—— (b) that the contract when signed did not contain any blank spaces except as provided in this subsection~~  
 15 ~~(7); and~~

16 ~~—— (c) of compliance with 31-1-231 through 31-1-236.~~

17 (8) If a retail installment transaction is subject to the federal Truth in Lending Act, 15 U.S.C. 1601-1667e,  
 18 ~~the a seller may, instead of complying with~~ that has complied with all of the requirements of the Act must be  
 19 considered to have satisfied the requirements of subsections (2) through (7) ~~(6), comply with all requirements of~~  
 20 ~~the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection~~  
 21 ~~(4) of this section.~~

22 (9) A person may not engage in any device or subterfuge intended to evade the requirements of this part,  
 23 including making loans or assisting another in making loans disguised as personal property sales and leaseback  
 24 transactions or disguising or assisting another in disguising loan proceeds as cash rebates for the pretextual  
 25 installment sale of goods or services.

26 ~~—— (10) A holder of a retail installment contract takes the contract subject to all claims and defenses of the~~  
 27 ~~buyer under the terms of the contract."~~

28

29 **Section 7.** Section 31-1-232, MCA, is amended to read:

30 **"31-1-232. Buyer's right of rescission.** The seller shall deliver to the buyer in person or mail to the

1 buyer at the address shown in the contract a copy of the contract, signed by the seller. If the contract is mailed,  
 2 the seller shall retain proof of delivery. Until the seller delivers or mails the contract, a buyer who has not received  
 3 delivery of the goods or been furnished the services has the right to rescind the agreement and to receive a  
 4 refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of  
 5 the contract or, if the goods cannot be returned, the value of the goods. Any acknowledgment by the buyer of  
 6 personal delivery of a copy of the contract signed by the seller must be conspicuous in a size equal to at least  
 7 10-point bold type and, if contained in the contract, must appear directly above the buyer's signature."

8

9 **Section 8.** Section 31-1-235, MCA, is amended to read:

10 **"31-1-235. Delinquency fee.** (1) The holder of a retail installment contract or a retail charge account  
 11 agreement may collect a delinquency charge on each installment in default for a period not less than 10 days in  
 12 an amount not to exceed \$10 or, in lieu of the charge, interest after maturity on each installment at a rate not  
 13 exceeding the highest lawful contract rate under 31-1-107 ALTERNATIVELY, THE HOLDER MAY CALCULATE A FIXED  
 14 DELINQUENCY FEE THAT IS EXPRESSED AS AN INTEREST RATE NOT EXCEEDING 15% OF EACH INSTALLMENT IN DEFAULT.  
 15 The delinquency charge expressed in this subsection (1) as a simple interest rate represents a method of  
 16 calculating a fixed delinquency charge and is not interest.

17 (2) This section does not preclude a holder of a retail installment contract or retail charge account  
 18 agreement from collecting, in addition to the delinquency charge, regularly accruing interest at the current contract  
 19 rate applicable under the terms of the buyer's and seller's contract, after maturity on each installment in default,  
 20 provided the contract was made on simple interest and is not a precomputed contract.

21 (3) In addition to a delinquency charge, the A retail installment contract may provide for the payment of  
 22 BOTH A DELINQUENCY CHARGE AS PERMITTED IN SUBSECTION (1) AND attorney fees not exceeding 15% of the amount  
 23 due and payable under the contract when the contract is referred for collection to an attorney not a salaried  
 24 employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses  
 25 incurred in connection with the delinquency."

26

27 **Section 9.** Section 31-1-236, MCA, is amended to read:

28 **"31-1-236. Notice and receipt of payment.** (1) Upon written request from the buyer, the holder of a  
 29 retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of  
 30 payments and the total amount unpaid under the contract. A buyer must be given a written receipt for any

1 payment when made in cash.

2 (2) After payment of all sums for which the buyer is obligated under a contract ~~and upon written demand~~  
3 ~~made by the buyer~~, the holder shall deliver or mail to the buyer, at the buyer's last-known address, one or more  
4 good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in  
5 any collateral security."

6

7 **Section 10.** Section 31-1-241, MCA, is amended to read:

8 **"31-1-241. Finance charge limitation.** (1) The finance charge included in a retail installment contract  
9 must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per  
10 annum.

11 (2) The finance charge included in a retail charge account agreement must be at a rate agreed upon by  
12 the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

13 (3) The finance charge must be computed from month to month (which need not be a calendar month)  
14 or over another regular billing cycle period by using either:

15 (a) the average daily balance in the account in the billing cycle period; or

16 (b) the ending balance of the account as of the last day of the billing cycle period less the amount of total  
17 purchases charged to the account during that billing cycle.

18 (4) A seller may change the terms of a revolving charge account whether or not the change is authorized  
19 by prior agreement. The seller shall give the buyer written notice of any change ~~in the billing cycle~~ at least 45 days  
20 before ~~prior to~~ the effective date of the change.

21 (5) If the retail seller increases the finance charge on a retail charge account agreement, then the  
22 increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after  
23 the effective date of the increase.

24 (6) For purposes of determining the balance to which the increased rate applies, all payments may be  
25 considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

26 (7) If the finance charge determined pursuant to subsection (3) for a monthly period is less than 50 cents,  
27 a maximum finance charge not in excess of 50 cents may be charged and collected for the period."

28

29 **Section 11.** Section 31-1-242, MCA, is amended to read:

30 **"31-1-242. Refunds on prepayment.** ~~(4)~~ Notwithstanding any other provision of law or terms the

1 provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before  
 2 maturity, the debt of any retail installment contract and ~~in so upon paying such the debt shall must~~ receive a  
 3 refund credit ~~thereon~~ for ~~such the~~ anticipation of payments on a precomputed contract or for any other unearned  
 4 fees calculated by use of the actuarial method unless another method at least as favorable to the buyer is  
 5 prescribed by law. The refund amount is the portion of the original finance charge that is applicable to all fully  
 6 unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of  
 7 prepayment.

8 (2) ~~In a contract where the period of the contract does not exceed 61 months, the amount of such refund~~  
 9 ~~shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances~~  
 10 ~~beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the~~  
 11 ~~schedule of payment in the contract. Where the amount of credit is less than \$1, no refund need be made.~~

12 (3) ~~In any contract where the period of the contract exceeds 61 months, the amount of such refund is~~  
 13 ~~the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally~~  
 14 ~~scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge~~  
 15 ~~is the charge that would have been earned for that period if the contract were not precomputed, by applying to~~  
 16 ~~the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant~~  
 17 ~~to federal law, based on the assumption that all payments were made as originally scheduled."~~

18  
 19 **NEW SECTION. Section 12. Department authorized to participate in nationwide licensing system**  
 20 **for purposes of licensing sales finance companies -- rulemaking.** (1) The department is authorized to  
 21 participate in a nationwide licensing system for licensing purposes under this part and may require sales finance  
 22 companies to apply for licensure in the manner and form that the department may direct.

23 (2) The department may establish requirements through rulemaking as necessary to comply with the  
 24 protocols and procedures of a nationwide licensing system pertaining to fees, renewal dates, amending or  
 25 surrendering a license, and any other activity necessary for participation in the nationwide licensing system.

26 (3) The department's portion of the licensing fees collected under this part must be deposited into the  
 27 department's account in the state special revenue fund to be used for administering this part.

28  
 29 **NEW SECTION. Section 13. Codification instruction.** [Section 12] is intended to be codified as an  
 30 integral part of Title 31, chapter 1, part 2, and the provisions of Title 31, chapter 1, part 2, apply to [section 12].

31 - END -