CHAPTER 330
HB 1243 - FINAL VERSION

28Mar2024... 0157h
05/23/2024 2168s
13Jun2024... 2306CofC

2024 SESSION

24-2200
10/05

HOUSE BILL ***1243***

AN ACT revising the laws relative to retail installment sales of motor vehicles, and relative to the sale of a vehicle to a Massachusetts resident.

SPONSORS: Rep. Hunt, Ches. 14

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill revises the law on retail installment sales of motor vehicles administered by the banking department and is a request of the banking department.

This bill also eliminates the requirement that a retail motor vehicle dealer submit a form notifying the New Hampshire department of motor vehicles of a sale of a vehicle to a Massachusetts resident.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT revising the laws relative to retail installment sales of motor vehicles, and relative to the sale of a vehicle to a Massachusetts resident.

Be it Enacted by the Senate and House of Representatives in General Court convened:

330:1 Retail Installment Sales of Motor Vehicles. RSA 361-A is repealed and reenacted to read as follows:

CHAPTER 361-A

RETAIL INSTALLMENT SALES OF MOTOR VEHICLES

361-A:1 Definitions. The following terms as used in this chapter shall have the following meanings, unless the context otherwise requires:

I. "Balloon payment" means any retail installment contract repayment option under which:

(a) The retail buyer is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the retail installment contract pursuant to which the credit is extended;

(b) The aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period; and

(c) The final payment is at least twice the amount of one periodic installment payment under a payment plan that provides for equal periodic installment payments during the term of the retail installment contract that precedes the due date of the final payment.

II. "Balloon retail installment contract" or "balloon contract" means a retail installment contract that contains a balloon payment feature.

III. "Branch office" means a business location within this state of a person required to be licensed under this chapter. "Branch office" does not include a person's principal office location.

IV. "Cash sale price" means the price at which the retail seller offers in the ordinary course of business to sell for cash the motor vehicle that is the subject of the retail installment contract.

V. "Control" means the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or company, whether through ownership of securities, by contract, or otherwise.

(a) Any person is presumed to control a licensee or company if such person:

(1) Is a director, general partner, or executive officer;

(2) Directly or indirectly has the right to vote 10 percent or more of a class of voting securities or membership interests, or has the power to sell or direct the sale of 10 percent or more of a class of voting securities or membership interests;

(3) In the case of a limited liability company, is a managing member; or

(4) In the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital.

(b) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.

VI. "Commissioner" means the commissioner of the state of New Hampshire banking department.

VII. "Department" means the state of New Hampshire banking department.

VIII. "Direct loan" means a retail installment contract that is financed directly by a sales finance company with a New Hampshire consumer without a retail seller involved, including for the purchase of a motor vehicle or the refinancing of a motor vehicle.

IX. "Direct owner" means any person, including individuals, that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of 10 percent or more of the applicant or licensee.

X. "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the retail buyer and imposed directly or indirectly by the lender as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

XI. "Financial services" or "financial services-related" means securities, commodities, banking, insurance, consumer lending, money transmission, debt adjustment, or real estate, including, but not limited to, acting as, or being associated with, a bank or savings association, credit union, mortgage lender, mortgage broker, mortgage servicer, real estate salesperson or agent, closing agent, title company, or escrow agent.

XII. "Holder" of a retail installment 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 or transferee, the sales finance company or other assignee or transferee, including any person who holds the servicing rights to a retail installment contract.

XIII. "Indirect loan" means a retail installment contract that is purchased by a sales finance company from a retail seller.

XIV. "Indirect owner" means, with respect to direct owners and other indirect owners in a multilayered organization:

(a) In the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or more of that corporation.

(b) In the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25 percent or more of the partnership's capital.

(c) In the case of an owner that is a trust, the trust, each trustee and each beneficiary of 25 percent or more of the trust.

(d) In the case of an owner that is a limited liability company:

(1) Those members that have the right to receive upon dissolution, or have contributed, 25 percent or more of the limited liability company's capital; and

(2) If managed by elected managers, all elected managers.

(e) In the case of an indirect owner, the parent owners of 25 percent or more of their subsidiary.

XV. "Lender" means any person that provides the initial or subsequent financing, including refinancing, for a motor vehicle and includes any legal successor to the rights of the lender, including the holder.

XVI. "Motor vehicle" means any device propelled by mechanical 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, house and boat trailers, all-terrain vehicles, snowmobiles, and similar recreational vehicles designed primarily for off-road use.

XVII. "Nationwide Multistate Licensing System and Registry" means a national licensing system and facility developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, for the licensing and registration of mortgage loan originators, mortgage lenders, mortgage servicers, mortgage brokers, and other non-depository financial service licensees, including retail sellers and sales finance companies.

XVIII. "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity however organized.

XIX. "Principal" of the applicant or licensee means an owner with 10 percent or more ownership interest, corporate officer, director, member, general or limited liability partner, limited partner with 10 percent or more ownership interest, trustee, beneficiary of 10 percent or more of the trust that owns the applicant or licensee, indirect owner, and any person occupying similar status or performing similar functions.

XX. "Principal office" means the main office location of a person required to be licensed under this chapter.

XXI. "Publicly traded" means a company whose securities are traded on a securities exchange system approved and supervised by the United States Securities and Exchange Commission, including but not limited to the New York Stock Exchange, NYSE American, and NASDAQ. The term also includes a public reporting company that is subject to sections 12 or 15(d) of the Securities Exchange Act of 1934 or any successor provision of law, as amended from time to time.

XXII. "Refinance" or "refinancing" means revising or replacing a current retail installment contract with a new retail installment contract.

XXIII. "Retail buyer" or "buyer" or "borrower" means a person who purchases a motor vehicle from a retail seller and who executes a retail installment contract either with the retail seller or with any lender for the initial purchase or refinancing of a motor vehicle.

XXIV. "Retail installment contract" or "contract" means an agreement pursuant to which the title to, the property in, or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a sales finance company indirectly from a retail seller or directly from a retail buyer, as security, in whole or in part, for the retail buyer's obligation. The term includes a promissory note, security agreement, finance agreement, chattel mortgage, conditional sales contract, rent-to-own agreement, and contract for the bailment of a motor vehicle.

XXV. "Retail installment transaction " means a consumer credit transaction as defined in RSA 358-K:1, or any successor provision of law, as amended from time to time, that is evidenced by a retail installment contract entered into between a retail buyer and a retail seller, or between a sales finance company and a retail buyer, in which the retail buyer purchases or refinances a motor vehicle subject to a retail installment contract at a time price payable in one or more deferred installments.

XXVI. "Retail seller" or "seller" means a person who sells a motor vehicle in this state that is subject to a retail installment contract, including any such person who executes the retail installment contract with the buyer in this state. The term does not include cash-only sales or sales in which the buyer obtains financing separately from the motor vehicle sale with the retail seller.

XXVII. "Sales finance company" means a person engaged, in whole or in part, directly or indirectly, in the business of acting as a lender, holder, assignee, or servicer in this state to one or more retail buyers who are in this state, or a person engaged in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to any state or federally chartered bank, savings bank, trust company, credit union, cooperative bank, finance company, lending agency, industrial bank, or investment company, if so engaged. The term does not include the pledgee of an aggregate number of retail installment contracts to secure a bona fide loan thereon, other persons not within the intent of this chapter as the commissioner may designate by rule or order, or a licensed retail seller that:

(a) Makes a retail installment contract and assigns such contract either within 5 business days, if the contract requires monthly payments, or within 2 business days, if the contract requires payments more frequently than monthly, of the contract's execution by the retail buyer and retail seller; or

(b) Finances 4 or fewer retail installment contracts in any consecutive 12-month period, and is not engaged in any other business within the definition of a sales finance company; or

(c) Makes retail installment contracts to employees for the purchases of motor vehicles solely from the retail seller employer.

XXVIII. “Servicer” means an individual, person, partnership, corporation, limited liability company, association, or other entity however organized and wherever located which, for itself or on behalf of the holder of a retail installment contract, is engaged in the business of holding the servicing rights or records payments made under a retail installment contract on its books and records and performs such other administrative functions as may be necessary to properly carry out the holder’s obligations under the retail installment contract.

XXIX. “Significant event” means:

(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) An indictment or conviction of the licensee, any of the licensee's principals, or any person in control of the licensee for a felony;

(d) The filing of a civil lawsuit in any court located in New Hampshire or by any resident of New Hampshire, except small claims actions, naming the licensee as a defendant that concerns the licensee's practices under this chapter;

(e) The commencement of a proceeding to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(f) Receiving notification of a license denial, cease and desist, consent agreement or order, suspension or revocation or any other formal administrative action in any state against the licensee;

(g) Receiving notification of any enforcement action or formal investigation by the attorney general of the state of New Hampshire or of any other state pursuant to any consumer protection statute, and the reasons thereof, except routine investigations of consumer complaints; or

(h) Entering into a consent agreement, settlement agreement, memorandum of understanding, or similar agreement with any regulatory body by the licensee that concerns the licensee's practices under this chapter.

XXX. "Starter interruption device" means a device that allows a motor vehicle to be disabled remotely.

XXXI. "Time price" means the cash sale price of the motor vehicle, together with any amounts included for insurance and other benefits if a separate charge is made therefor, title fees, and the finance charge, which may include insurance and other benefits.

XXXII. "Title fees" mean the fees for filing, recording or investigating, perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract, which shall not exceed the actual cost assessed by the department of safety, division of motor vehicles, or other state or local agency for filing, recording or investigating, perfecting and releasing or satisfying such title or lien.

361-A:2 Licensing of Sales Finance Companies and Retail Sellers Required.

I. Any person not exempt under RSA 361-A:3 that, in its own name or on behalf of other persons, engages in the business of a retail seller or sales finance company in this state or with persons located in this state shall obtain a license under this chapter.

II. Obtaining a license under this chapter does not constitute a finding that the commissioner has passed in any way upon the merits or qualifications of such person or that the commissioner has recommended or given approval to any person. It is unlawful to make, or cause to be made, to any prospective buyer, customer, or client any representation inconsistent with the provisions of this section.

III. Any license fee required under this chapter shall be paid before a license becomes effective.

IV. A person may not use any device, subterfuge, or pretense to evade the requirements of this section.

361-A:3 Exemptions.

I. No state or federally chartered bank, savings bank, trust company, credit union, cooperative bank, or industrial bank shall be required to obtain a license under this chapter but shall comply with the provisions of RSA 361-A:14 through RSA 361-A:23, unless otherwise exempted in this chapter.

II. Bankruptcy trustees assigned or delegated to bankruptcy claimants to service existing retail installment contracts shall not be required to obtain a license under this chapter.

361-A:4 Application for License and Fees.

I. Applicants for a license shall complete and file with the department one verified application through the Nationwide Multistate Licensing System and Registry, using the Nationwide Multistate Licensing System and Registry form, which shall include, but is not limited to, the following information:

(a) The name of the applicant;

(b) The applicant's tax identification number;

(c) The address where the business is or is to be conducted and similar information for any branch office of the applicant;

(d) The trade name, if any, under which the applicant proposes to conduct such business and evidence of authority to use the trade name in New Hampshire;

(e) The articles of incorporation or organization or partnership agreement;

(f) The name and address of the New Hampshire registered agent if the applicant is a foreign entity;

(g) A financial statement as described in paragraph II;

(h) The names and social security numbers of the applicant's principals;

(i) Authorization for the department to conduct a background check of the applicant's principals;

(j) Any injunction or administrative order that has been issued against the applicant or any of its principals and whether the applicant or any of its principals have been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or of any felony; and

(k) Any other information that the commissioner may require including, but not limited to, the applicant's form and place of organization, the applicant's proposed method of doing business, the qualifications and business history of the applicant and its principals, and the applicant's financial condition and history.

II.(a) The license issued for the licensee's principal office shall be referred to as a principal office license. Each additional location at which the licensee is engaged in the business of a sales finance company or retail seller, occurring at a location in this state that is separate from the licensee's principal office, shall be referred to as a branch office.

(b) Applications for an initial license shall be accompanied by a nonrefundable application fee of $350 for the principal office of the licensee, whether within this state or outside of this state, and $100 for each branch office maintained in this state.

(c) A person required to obtain a sales finance company license under this chapter shall not be required to obtain a retail seller license.

(d) Applications for a license shall include a financial statement for the person to be licensed prepared in accordance with United States generally accepted accounting principles with appropriate note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the licensee. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge. Financial statements provided in connection with a license application under this section shall be subject to review and verification during the course of any examination or investigation conducted under this chapter. An applicant's financial statement shall include a balance sheet, income statement, statement of changes in owners' equity, cash flow statement, and statement of net worth. If the financial statement is more than 6 months old, the applicant shall also submit an interim balance sheet and income statement not more than 3 months old. The financial statement required under this subparagraph shall not be consolidated with the financial statement of any parent or controlling entity.

III.(a)(1) Unless the applicant is a publicly traded corporation, the department shall complete a background investigation and criminal history records check on the applicant's principals and any person in a similar position or performing similar functions. If the applicant is a subsidiary, the department shall complete a background investigation and criminal history records check on individuals who are indirect owners.

(2) The persons described in subparagraph (1) shall submit to the department a criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of any criminal records of such person. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints is necessary in order to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

(3) The department shall submit the criminal history records release form to the New Hampshire division of state police which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(4) The department may require the applicant or licensee to pay the actual costs of each background investigation and criminal history records check.

(5) The department may rely on criminal history records checks reported through a national licensing facility in lieu of procedures in subparagraphs (2) and (3).

(b) Every applicant for licensing under this chapter shall file with the commissioner, in a form satisfactory to the commissioner, irrevocable consent appointing the commissioner to receive service of any lawful process in any non-criminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous application need not file another. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order under this chapter, and such person has not filed a consent to service of process under this section and personal jurisdiction over such person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to such person's appointment of the commissioner to receive service of any lawful process. Service may be made by leaving a copy of the process in the office of the commissioner along with $5, but is not effective unless:

(1) The plaintiff, who may be the attorney general in a suit, action, or proceeding instituted by him or her, forthwith sends a notice of the service and a copy of the process by registered mail to the defendant or respondent at such person's last address on file with the commissioner; and

(2) The plaintiff's affidavit of compliance with this paragraph is filed in the case on or before the date specified by the court on the summons, if any, or within such further time as the court allows.

(c) Applications for a renewal license shall be completed and filed through the Nationwide Multistate Licensing System and Registry, using the Nationwide Multistate Licensing System and Registry form. Applications for a renewal license shall be accompanied by the required fee to the department and shall be filed on or before December 1 for the ensuing year that begins on January 1.

IV.(a) An applicant for a sales finance company or retail seller license must provide, and a licensee at all times must maintain, security consisting of a surety bond in the amount of $25,000 and in a form satisfactory to the commissioner. The surety bond shall be payable to the state of New Hampshire and the commissioner for the benefit of any person who is damaged by any violation of this chapter and shall be conditioned upon the licensee's compliance with each provision of this chapter.

(b) Surety bonds shall include a provision requiring the surety to give written notice to the commissioner 30 days in advance of the cancellation or termination of the bond.

(c) Every bond shall provide that no recovery shall be made against the bond unless the state makes a claim for recovery or the person brings suit naming the licensee within 6 years after the act upon which the recovery or suit is based. The obligations of the surety shall survive the bankruptcy, insolvency, liquidation, or reorganization of the licensee, including, without limitation, any bankruptcy, insolvency, liquidation, or reorganization commenced by or against the licensee under any applicable state or federal law, including the United States Bankruptcy Code.

(d) When an action is commenced on a licensee's bond, the licensee shall immediately file a new bond. Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

V. Sums collected under this chapter shall be payable to the state treasurer as restricted revenue and credited to the appropriation for the commissioner, consumer credit administration division.

VI. No license shall be issued to any person whose principal office is located outside of this state unless that person designates an agent residing within this state for service of process.

VII. Each license issued under this chapter shall state the name and address of the principal office of the licensee and, if the license is a branch office license, the name and address of the branch office location for which that license is issued.

361-A:5 License Grant and Renewal.

I. Upon the filing of the complete application, payment of the required application fee, and completion of a pre-licensing investigation by the department, the commissioner shall issue a license to the applicant and to the applicant's branches to engage in the business of a sales finance company or retail seller if the commissioner determines that:

(a) The applicant's financial resources and responsibility, experience, character and general fitness, personnel, and record of past or proposed conduct warrant the public's confidence; and

(b) The business will be operated lawfully, honestly, and fairly within the provisions of this chapter.

II.(a) In addition to any other requirement under this chapter, a sales finance company may renew its license by paying an annual fee of $350 for the principal office license and $100 for each branch office license to the department if the licensee:

(1) Holds a valid license under this section; and

(2) Is in compliance with this chapter and the rules adopted pursuant to this chapter.

(b) In addition to any other requirement under this chapter, a retail seller may renew its license by paying an annual fee of $50 for the principal office license and $30 for each branch office license to the department if the licensee:

(1) Holds a valid license under this section; and

(2) Is in compliance with this chapter and the rules adopted pursuant to this chapter.

III. The initial license term shall begin on the day the application is approved. The license shall expire on December 31 of the year in which the license term began, unless the initial license date is between November 1 and December 31, in which instance the initial license term shall run through December 31 of the following year. Licenses issued pursuant to this chapter shall be renewed annually. The renewal term shall be for a period of 1 year and shall begin on January 1 of each year after the initial license term and shall expire on December 31 of the year the renewal term begins.

IV. A license issued under this chapter shall not be transferable or assignable without obtaining the approval of the commissioner before the assignment or transfer.

361-A:6 License Denial or Abandonment; Appeal.

I. If the commissioner determines that the applicant fails to meet the requirements of this chapter, the commissioner shall immediately, in writing, notify the applicant of that determination.

II. The commissioner may deny a license application if the applicant or the applicant's principal:

(a) Has filed an application for licensing which was incomplete in any material respect;

(b) Is the subject of an order entered within the past 5 years by this state, any other state, or any state or federal regulator denying, suspending, or revoking a license or registration;

(c) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;

(d) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;

(e) Does not possess the financial resources and responsibility, experience, character and general fitness, personnel, or record of past or proposed conduct to warrant the public's confidence;

(f) Has not demonstrated that the business will be operated lawfully, honestly, and fairly within the provisions of this chapter; or

(g) Should not be licensed for other good cause shown.

III. Applicants may appeal a license denial by requesting the commencement of an adjudicative proceeding under RSA 541-A and any rules of the commissioner adopted thereunder.

IV. Applicants may apply to the commissioner for a rehearing under RSA 541 if the decision in an appeal conducted pursuant to paragraph III affirms a denial of a license application.

V. Any appeal from a decision on rehearing shall be by appeal to the supreme court pursuant to RSA 541.

VI. The commissioner may deem abandoned and withdrawn any application for licensure under this chapter if the applicant fails to respond in writing within 90 calendar days to any communication from the department, including but not limited to any communication made through the Nationwide Multistate Licensing System and Registry, requesting a response.

361-A:7 License Surrender.

I. A licensee that ceases to engage in the business of a sales finance company or retail seller at any time for any cause shall file a request to surrender its license to the commissioner within 15 calendar days of such cessation and shall file such additional information as may be required by the department.

II. Surrender of a license shall not take effect until the commissioner deems the surrender process complete and in furtherance of the public interest.

III. Failure to comply with the provisions of this section and any rules adopted under this section shall be cause for denial of future license applications and may result in the imposition of penalties under RSA 361-A:27.

361-A:8 Continuing Obligation to Update.

I. Licensees shall update information on file with the commissioner. If any information filed with the commissioner becomes materially inaccurate, the licensee shall, within 30 days of the event necessitating the update, submit an amendment to its application records that will correct the information on file with the commissioner.

II.(a) A licensee shall submit written notification to the department of the addition or departure for any reason of any principal, and shall provide the name and address of any new principal no later than 30 days after such change.

(b) Each new principal shall be subject to and shall authorize the commissioner to conduct a background investigation and a criminal history records check.

(c) The commissioner shall investigate management and ownership changes including, but not limited to, each principal's qualifications and business history.

(d) The licensee shall investigate and disclose any injunction or administrative order that has been issued against any principal and whether the principal has been convicted of a misdemeanor involving the lending industry or any aspect of the lending business or convicted of any felony, prior to the commissioner's approval of such change.

III. Licensees shall notify the department of any change of address within 30 days of any such change and the commissioner shall endorse such change of address on the person's license.

IV. No licensee shall transact any business under this chapter under a trade name or any other name different from the name stated in its license or branch office license without immediately notifying the commissioner, who shall then amend the license accordingly. Any trade name or entity name shall be registered with the New Hampshire secretary of state.

V. Significant events shall be reported to the department in writing within 10 calendar days.

VI. Any officer, owner, manager, or agent of any licensee, and any person controlling or having a contract under which he or she has a right to control such a licensee, whether exclusively or otherwise, and any person with executive authority over or in charge of any segment of such a licensee's affairs, shall reply promptly in writing, or in other designated form, to any written inquiry from the commissioner requesting a reply. The commissioner may require that any communication made to him or her under this section be verified.

361-A:9 Reporting and Filing Requirements.

I.(a) Each licensee shall file, under oath, an annual report through the Nationwide Multistate Licensing System and Registry on or before March 31 each year concerning operations for the preceding year or license period ending December 31 in a form satisfactory to the commissioner.

(b) Any person who surrenders, withdraws, or does not renew a license shall file the annual report as required in subparagraph (a), notwithstanding the fact that such person is not licensed on the date that the report is due.

II.(a) Each sales finance company shall file, under oath, its financial statement through the Nationwide Multistate Licensing System and Registry within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with United States Generally Accepted Accounting Principles and shall include a balance sheet, income statement, statement of changes in owners' equity, a cash flow statement, and note disclosures. If the financial statement is not audited, a certification statement shall be attached and signed by a duly authorized officer of the sales finance company. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge. The financial statement required under this subparagraph (a) shall not be consolidated with the financial statement of any parent or controlling entity.

(b) Each retail seller shall file, under oath, its financial statement through the Nationwide Multistate Licensing System and Registry within 90 days from the date of its fiscal year end. The financial statement shall be prepared in accordance with United States generally accepted accounting principles and shall include a balance sheet and income statement. If the financial statement is not audited, a

certification statement shall be attached and signed by a duly authorized officer of the sales finance company. The certification statement shall state that the financial statement is true and accurate to the best of the officer's belief and knowledge. The financial statement required under this subparagraph shall not be consolidated with the financial statement of any parent or controlling entity.

(c) In lieu of the requirements of subparagraph (a) or (b), licensees may submit copies of their most recent Securities and Exchange Commission Form 10-K and Form 10-Q statements.

III. Any licensee failing to file either the annual report or the financial statement required by this section within the time prescribed shall be subject to a penalty of $25 for each calendar day the annual report or financial statement is overdue up to a maximum penalty of $2,500 per report or statement and shall be subject to suspension or revocation of its license.

IV. In addition to the annual report and financial statement required by this section, the commissioner may require such other regular or special reports as the commissioner deems necessary to the proper supervision of licensees under this chapter.

V. Electronic filings, when received by the department, are deemed filed, and are prima facie evidence that a filing has been duly authorized and made by the signatory on the application or document, are admissible in any civil or administrative proceeding under this chapter, and are admissible in evidence in accordance with the rules of superior court in any action brought by the attorney general under this chapter.

VI. If any filing deadline falls on a Saturday or Sunday or on a New Hampshire state or federal legal holiday, the due date shall be automatically extended to the next business day following such weekend or holiday.

361-A:10 Record Keeping Requirements.

I. The licensee shall maintain such books and records in accordance with sound business and accepted accounting practices as will enable the department to determine whether the licensee's business is in compliance with the provisions of this chapter and the rules adopted pursuant to it, including but not limited to records of each retail installment transaction made under this chapter. All such records shall be maintained in a readily accessible location and are open to inspection and examination by the department at the licensee's New Hampshire principal office or its New Hampshire branch office location or the office of its New Hampshire agent for a period of at least 3 years after the licensee's final transaction on a retail installment contract or application file.

II. A licensee may maintain its records in electronic format if, upon request, the licensee provides the commissioner with:

(a) A full explanation of the programming of any data storage or communications systems in use; and

(b) Information from any books, records, electronic data processing systems, computers, or any other information storage system in the form requested by the commissioner.

361-A:11 Consumer Inquiries.

I. Consumer complaints naming licensees under this chapter, which are filed in writing with the office of the commissioner, shall be forwarded via electronic mail or certified mail to the licensee for

response within 10 days of receipt by the department. Licensees shall, within 10 days after receipt of such complaint, send a written acknowledgment thereof to the consumer and the department. Not later than 30 days following receipt of such complaint, the licensee shall conduct an investigation of the complaint and either:

(a) Make appropriate corrections in the account of the consumer and transmit to the consumer and the department written notification of such corrections, including documentary evidence thereof; or

(b) Transmit a written explanation or clarification to the consumer and the department which sets forth, to the extent applicable, the reasons why the licensee believes its actions are correct, including copies of documentary evidence thereof.

II. A licensee who fails to respond to a consumer complaint as required by this section within the time prescribed shall pay to the commissioner the sum of $50 for each day such response is overdue. For purposes of this section, the date of submission shall be the date such response is received by the department.

III.(a) Licensees which, because of extenuating circumstances beyond the control of the licensee, are unable to comply with the time frames prescribed in this section, may make written request to the commissioner for a waiver of such time frames. Waivers shall not be granted or considered unless the request for the waiver:

(1) Is received by the department within 20 days following the licensee's receipt of the complaint;

(2) Specifies the reason for the request; and

(3) Specifies a date certain by which the licensee shall comply with the provisions of this section.

(b) Requests for waivers shall be either granted or denied within 5 days of receipt by the department.

361-A:12 Examinations and Investigations.

I. The commissioner or the commissioner's representative may, with or without notice to the licensee or any other person subject to this chapter, examine the business affairs of any licensee or any other person subject to this chapter, whether licensed or not, at any time the commissioner deems necessary, for the purpose of determining whether the licensee or other person subject to this chapter is in compliance with the laws of this chapter and any rules adopted thereunder. In determining compliance, the commissioner or the commissioner’s representative may examine relevant books, accounts, records, files, and other documents, whether electronically stored or otherwise. Upon request, the commissioner or the commissioner’s representative shall be provided with access to the licensee’s or unlicensed person’s principal place of business and additional offices, if applicable, where files, records, safes, and vaults that are relevant to the examination may be located. The commissioner or the commissioner’s representative may require the attendance of any licensee’s principal or control person and may examine him or her under oath concerning the subject matter of any examination or investigation, and may require that person to produce relevant books, accounts, papers, and records.

II. The commissioner may, in his or her discretion, accept all or part of a report of examination of another state agency or an agency of another state or of the federal government. To avoid unnecessary duplication of examinations, the commissioner may, insofar as he or she deems practicable in administering this section, cooperate with and conduct examinations in conjunction with the regulators of other states, the Federal Trade Commission, other federal regulators, or their successors in conducting examinations and investigations.

III. The department may subpoena witnesses, administer oaths, and compel, by subpoena duces tecum, the production of all books, records, files, and other documents and materials whether electronically stored or otherwise relevant to its investigation at any time in any matter over which the department has jurisdiction, control, or supervision pertaining to the provisions of this chapter.

IV. Upon request, every person being examined, and all of the officers, directors, employees, agents, and representatives of such person shall make freely available to the commissioner or the commissioner's examiners the accounts, records, documents, files, information, assets, and matters in their possession or control that are relevant to the subject of the examination and shall facilitate the examination.

V. The expense of such examination or investigation shall be chargeable to and paid by the licensee or other person subject to this chapter being examined. No licensee shall be charged for more than one examination or investigation within a 24 month period, unless good cause exists to conduct more than one examination or investigation within a 24 month period. Under such circumstances, the expense of any examination or investigation shall continue to be chargeable to and paid by the licensee or other person subject to this chapter being examined. The examination and investigation costs shall be calculated as set forth in RSA 383:11.

VI.(a) The affairs and records of any licensee or person subject to this chapter shall be subject at any time to periodic, special, regular, or other examination by the department with or without notice. Any licensees, including those that maintain their files and business records in another state, or other person subject to this chapter, shall:

(1) Deliver to the commissioner or the commissioner's representative a list of all New Hampshire consumers who have contracted with the licensee or with whom the licensee is otherwise engaged in business regulated under this chapter, and any other requested lists or information summarizing the business of the licensee, within 30 days of receipt of the commissioner or commissioner representative's written request; and

(2) Deliver to the commissioner or the commissioner's representative files selected by the commissioner or the commissioner's representative from the lists delivered in subparagraph (a)(1), and any other files or documents requested, within 60 days of receipt of the commissioner or commissioner representative's written request.

(b) The commissioner or commissioner representative's written requests, as described herein, shall be sent to the licensee. Upon proof of valid delivery of such a written request, a licensee's failure to provide the requested files or documents within the time established by this paragraph shall subject a licensee or person subject to this chapter to a fine of $50 per day for each day the files or

documents are not provided. Failure to provide files or documents to the commissioner within 60 days after receipt of the request shall be sufficient cause for license revocation, suspension, or denial.

VII. The commissioner or the commissioner's representative may investigate at any time any person that the commissioner reasonably believes is engaged in the business of a sales finance company or retail seller or participating in such business as principal, agent, broker, or otherwise; or any person that the commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, or any rule or order under this chapter.

VIII. In addition to the costs of any investigation, as set forth herein, the commissioner may recover the costs of any investigation conducted under this chapter, in addition to any other penalty provided for under this chapter.

IX. If the commissioner or examiner finds any accounts or records to be inadequate, or kept or posted in a manner not in accordance with generally accepted accounting principles, the commissioner may employ experts to reconstruct, rewrite, post, or balance the inadequate accounts or records for purposes of the examination at the expense of the person being examined, but only after the commissioner or examiner has given the licensee or person subject to this chapter written notice and a reasonable opportunity to do so.

X.(a) Before a report of examination is finalized, the examiner shall offer the licensee an opportunity to discuss the initial findings of the examination with the examiner.

(b) Upon receipt of the written report of examination, the licensee shall have 30 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report, recommend any changes, and set forth in writing the remedial course of action the licensee will pursue to correct any deficiencies outlined in the report.

(c) All reports of examination under this section shall be confidential and shall not be available for public inspection and shall not be subject to disclosure under RSA chapter 91-A. The comments and recommendations of the examiner shall also be confidential information and shall not be available for public inspection and shall not be subject to disclosure under RSA chapter 91-A.

361-A:13 Prohibitions; Fraud and Dishonesty.

I. No person, in connection with engaging in the business of a retail seller or sales finance company, directly or indirectly shall:

(a) Employ any device, scheme, or artifice to defraud;

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) Make fraudulent misrepresentations or circumvent or conceal any material information required to be provided to a borrower under the provisions of this chapter; or

(e) Engage in dishonest or unethical practices in conducting the business of making or collecting on retail installment contracts.

II. No person shall make or cause to be made in any document filed under this chapter or in any proceeding under this chapter any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

III. Any condition, stipulation, or provision of any retail installment transaction in violation of any provision of this chapter or any rule or order under this chapter is void.

IV. No person shall instruct, solicit, propose, or cause a person to sign another's signature on any document without legal authority.

V. No person subject to this chapter shall solicit, accept, or execute any contract or other document related to any transaction that contains any blanks to be filled in after signing or initialing the contract or other document, except for forms authorizing the verification of application information or as otherwise expressly provided in this chapter.

VI. No person subject to this chapter shall conduct any business covered by this chapter without holding a license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a license as required under this chapter.

361-A:14 Provisions Applicable to All Persons Under This Chapter.

I. No person making a retail installment contract, shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions which is false, misleading, or deceptive.

II. Persons subject to this chapter shall be responsible for the supervision of their employees, agents, and branch offices. Licensees shall establish and maintain a system to supervise the activities of their employees, agents, and branch offices that is reasonably designed to achieve compliance with this chapter and any rules adopted thereunder.

III. Each licensee shall maintain a positive net worth of at least $25,000 at all times.

IV. Examination expenses, fines, penalties, and other moneys owed to the department shall be paid within 14 days of receipt of notice by the licensee or other person or at such later time as determined by the commissioner.

361-A:15 Requirements and Prohibitions as to Retail Installment Contracts; Indirect Loans.

I. A contract shall be in writing, shall be signed and dated by the buyer and the seller and shall be completed as to all essential provisions or by memorandum as provided in paragraphs IV and V prior to the signing of the contract by the buyer.

II. 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: 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 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."

III. The contract shall contain:

(a) The names of the seller and the buyer,

(b) The place of business of the seller,

(c) The legal residence or place of business of the buyer as specified by the buyer,

(d) A description of the motor vehicle including its make, year, model and identification numbers or marks.

IV. The contract shall contain the following calculation:

(a) The cash sale price of the motor vehicle or the amount paid to the previous lienholder in a refinancing transaction;

(b) The amount of the borrower'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 description and the amounts paid to others on the borrower's behalf, including amounts paid on traded-in property, title fees, insurance, guaranteed asset protection waiver, or other benefits;

(e) The amount, if any, paid to the borrower;

(f) The amount financed, which is the sum of (c), (d), and (e);

(g) The description and amounts, if any, of prepaid finances charges;

(h) The total of prepaid finance charges;

(i) The principal balance of the loan, which is the sum of (f) and (h);

(j) The time balance, payable in installments by the borrower, the number of installments, the amount of each installment and the due date or period thereof.

(k) The items in subparagraphs (a)-(j) in this paragraph 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.

V. The seller shall deliver to the buyer, or mail to the buyer at the address shown on the contract, a copy of the signed contract. Until a buyer has received delivery of the motor vehicle and a copy of the signed contract, the buyer shall have the right to rescind the 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 or delivery of the vehicle 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.

VI. The amount, if any, included for insurance, which may be purchased by or protects the holder of the retail installment 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, the holder shall, within 30 days after execution of the retail installment 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 insurance from an agent or broker of the buyer's own selection authorized by the insurance commissioner to do business in the state, but in such case the inclusion of the dual interest insurance premium in the retail installment contract shall be optional with the seller.

VII. The holder may, if the contract so provides, collect a single delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5 percent of the installment in default. 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 and the financier's out-of-pocket collection expenses. The pyramiding of delinquency or the collection of unfair late charges is prohibited.

VIII. The following provisions are prohibited in retail installment contracts and any separately executed instrument in connection therewith, and shall not be enforceable:

(a) Any provision for confession of judgment, power of attorney therefor, or wage assignment.

(b) Any provision for the subsequent inclusion of title to or lien upon any goods, other than the motor vehicle which is the subject matter of the retail installment sale or accessories therefor or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any such accessory or special or auxiliary equipment, as security for payment of the total time price.

(c) Any provision whereby, in the absence of the buyer's default, the holder may accelerate the maturity of any part of all of the time balance.

(d) Any provision whereby a seller or holder of the contract, or other person acting on his behalf, is authorized to enter the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of a motor vehicle.

(e) Any provision whereby the buyer waives any right of action against the seller or holder of the contract, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle.

(f) Any provision whereby the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of the motor vehicle.

(g) Any provision whereby the seller is relieved from liability for any legal remedies which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith, shall not be enforceable.

(h) Any provision permitting the holder to waive the buyer's right to notice of default.

(i) Any provision permitting the holder to accelerate the principal balance under the contract for default for any cause other than:

(1) Non-payment of any amount due under the terms of the contract.

(2) Failure to insure the vehicle which secures the contract against loss, if such insurance is required by the terms of the contract. Provided, however, that the holder may not accelerate the principal balance solely as a result of the failure to insure until the holder gives the buyer written notice

conspicuously stating that the buyer has the opportunity to cure the default under this subparagraph by submitting proof of insurance to the holder within 15 days of the mailing of the notice. If no proof of insurance is submitted to the holder within 15 days of mailing of notice, the holder may accelerate the principal balance. This subparagraph shall not apply if the contract obligates the holder to purchase such insurance and collect the premiums for the insurance from the buyer.

(3) Removal of the collateral from the United States or Canada without the holder's permission.

(4) Sale, rental, lease, or other transfer of an interest in the collateral without the holder's permission.

(5) Commencement of a proceeding in bankruptcy by or against the buyer.

(6) Other significant impairment of the realization of the collateral, limited to seizure of the vehicle by law enforcement officials, encumbrance of the vehicle, abandonment of the vehicle, or loss, theft, or destruction of the vehicle that is not covered by insurance

(j) Any provisions permitting the holder to:

(1) Declare the note in default prior to 10 days following failure to make any installment payment due; or

(2) Add any charge for vehicle repairs to the principal balance of the contract after the contract has been executed; or

(3) Assess a prepayment penalty on a contract with a term of less than 6 years.

(k) A clause permitting the continuation of interest after repossession of the borrower’s motor vehicle.

(l) Any provision under which a buyer waives any right, benefit, or privilege which is conferred upon the buyer under this chapter.

IX. The retail installment contract shall include a notice, printed in type size equal to at least 10-point type, stating that the consumer may file a complaint with the commissioner along with the department’s contact information.

361-A:16 Requirements and Prohibitions as to Retail Installment Contracts; Direct Loans.

I. A contract shall be in writing, shall be signed and dated by the buyer and the sales finance company; and shall be completed as to all essential provisions or by memorandum as provided in paragraphs VI and V prior to the signing of the contract by the buyer.

II. 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: 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 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."

III. The contract shall contain:

(a) The names of the sales finance company and the buyer;

(b) The place of business of the sales finance company;

(c) The legal residence or place of business of the buyer as specified by the buyer; and

(d) A description of the motor vehicle including its make, year, model and identification numbers or marks, or the sales finance company shall retain in the loan file a copy of the purchase and sale agreement between the buyer and the seller that contains a description of the motor vehicle that is substantially similar to the description.

IV. The contract shall contain the following calculation:

(a) The cash sale price of the motor vehicle or amount paid to the previous lienholder if a refinance;

(b) The amount of the borrower'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 description and the amounts paid to others on the borrower's behalf, including amounts paid on traded-in property, title fees, insurance, guaranteed asset protection waiver, or other benefits;

(e) The amount, if any, paid to the borrower;

(f) The amount financed, which is the sum of (c), (d), and (e);

(g) The description and amounts, if any, of prepaid finances charges;

(h) The total of prepaid finance charges;

(i) The principal balance of the loan, which is the sum of (f) and (h); and

(j) The time balance, payable in installments by the borrower, the number of installments, the amount of each installment and the due date or period thereof.

IV-a. The subparagraphs in paragraph IV 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.

V. The sales finance company shall deliver to the buyer, or mail to the buyer at the address shown on the contract, a copy of the signed contract. Until a buyer has received delivery of the motor vehicle and a copy of the signed contract, the buyer shall have the right to rescind the 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 or delivery of the vehicle 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.

VI. The amount, if any, included for insurance, which may be purchased by or protects the holder of the retail installment 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, the holder shall, within 30 days after execution of the retail installment 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 insurance from an agent or broker of the buyer's own selection authorized by the insurance commissioner to do business in the state, but in such case the inclusion of the dual interest insurance premium in the retail installment contract shall be optional with the seller.

VII. The holder may, if the contract so provides, collect a single delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5 percent of the installment in default. 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 and the financier's out-of-pocket collection expenses. The pyramiding of delinquency or the collection of unfair late charges as prohibited.

VIII. The following provisions are prohibited in retail installment contracts and any separately executed instrument in connection therewith, and shall not be enforceable:

(a) Any provision for confession of judgment, power of attorney therefor, or wage assignment;

(b) Any provision for the subsequent inclusion of title to or lien upon any goods, other than the motor vehicle which is the subject matter of the retail installment sale or accessories therefor or special or auxiliary equipment used in connection therewith, or in substitution, in whole or in part, for any such accessory or special or auxiliary equipment, as security for payment of the total time price;

(c) Any provision whereby, in the absence of the buyer's default, the holder may accelerate the maturity of any part of all of the time balance;

(d) Any provision whereby a seller or holder of the contract, or other person acting on his or her behalf, is authorized to enter the buyer's premises unlawfully, or to commit any breach of the peace in the repossession of a motor vehicle;

(e) Any provision whereby the buyer waives any right of action against the seller or holder of the contract, or other person acting on his or her behalf, for any illegal act committed in the collection of payments under the contract or in the repossession of the motor vehicle;

(f) Any provision whereby the buyer executes a power of attorney appointing the seller or holder of the contract, or other person acting on his behalf, as the buyer's agent in the collection of payments under the contract or in the repossession of the motor vehicle;

(g) Any provision whereby the seller is relieved from liability for any legal remedies which the buyer may have had against the seller under the contract, or any separate instrument executed in connection therewith, shall not be enforceable;

(h) Any provision permitting the holder to waive the buyer's right to notice of default;

(i) Any provision permitting the holder to accelerate the principal balance under the contract for default for any cause other than:

(1) Non-payment of any amount due under the terms of the contract.

(2) Failure to insure the vehicle which secures the contract against loss, if such insurance is required by the terms of the contract. Provided, however, that the holder may not accelerate the principal balance solely as a result of the failure to insure until the holder gives the buyer written notice

conspicuously stating that the buyer has the opportunity to cure the default under this subparagraph by submitting proof of insurance to the holder within 15 days of the mailing of the notice. If no proof of insurance is submitted to the holder within 15 days of mailing of notice, the holder may accelerate the principal balance. This subparagraph shall not apply if the contract obligates the holder to purchase such insurance and collect the premiums for the insurance from the buyer.

(3) Removal of the collateral from the United States or Canada without the holder's permission.

(4) Sale, rental, lease, or other transfer of an interest in the collateral without the holder's permission.

(5) Commencement of a proceeding in bankruptcy by or against the buyer.

(6) Other significant impairment of the realization of the collateral, limited to seizure of the vehicle by law enforcement officials, encumbrance of the vehicle, abandonment of the vehicle, or loss, theft, or destruction of the vehicle that is not covered by insurance.

(j) Any provisions permitting the holder to:

(1) Declare the note in default prior to 10 days following failure to make any installment payment due;

(2) Add any charge for vehicle repairs to the principal balance of the contract after the contract has been executed; or

(3) Assess a prepayment penalty on a contract with a term of less than 6 years.

(k) A clause permitting the continuation of interest after repossession of the borrower’s motor vehicle.

(l) Any provision under which a buyer waives any right, benefit, or privilege which is conferred upon the buyer under this chapter.

IX. The retail installment contract shall include a notice, printed in type size equal to at least 10-point type, stating that the consumer may file a complaint with the commissioner along with the department’s contact information.

X. Paragraphs I and IV shall not apply to federally chartered banks, savings banks, trust companies, credit unions, cooperative banks, or industrial banks which do not act as sellers, but provide direct loans to retail buyers and supply a disclosure statement in conformity with Federal Reserve Board Regulation Z, Truth-in-Lending, 12 C.F.R. 1026, as amended from time to time.

361-A:17 Requirements and Prohibitions as to Origination and Funding of Loans.

I. The borrower shall be given a copy of all fully executed documents related to the transaction.

II. No charge for any examination, service, brokerage, commission, or other fee shall be directly or indirectly made or contracted for except the lawful fees, if any, actually and necessarily paid out by the lender to any public officer, for filing or recording in any public office any instrument securing such loan, which fees may be collected when such loan is made, or at any time thereafter and except the reasonable costs, charges, and expenses, including court costs actually incurred in connection with a repossession of the security or an actual sale of the security in foreclosure proceedings or upon entry of judgment.

III. If any equipment is added to the vehicle to facilitate repossession or payment, the borrower will be given a notice explaining the abilities of the equipment. The notice must include a statement that it may be removed at no cost to the borrower when paid off.

IV. Persons subject to or licensed under this chapter may offer, sell, and provide guaranteed asset protection (GAP) waivers, as defined in RSA 361-E:2, I(f), in accordance with RSA 361-E. Any violation of RSA 361-E is a violation of this chapter.

V.(a) When a person enters into a retail transaction where a consumer trades in or sells a vehicle that is subject to a lien, the person shall, within 21 calendar days of the date of sale, submit payment to the lien holder to pay off the lien on the traded-in or sold motor vehicle, unless the underlying contract has been rescinded before expiration of 21 calendar days.

(b) In this section, the term "date of sale" shall be the date the parties entered into the transaction as evidenced by the date written in the contract executed by the parties, or the date the person took possession of the traded-in or sold vehicle. In the event the date of the contract differs from the date the person took possession of the traded-in vehicle, the "date of sale" shall be the date the person took possession of the traded-in vehicle.

VI. In regard to finance charges:

(a) Notwithstanding the provisions of any other law, the finance charge on any retail installment contract under this chapter shall be such as may be agreed upon by the buyer and the seller or by the buyer and the sales finance company.

(b) Such finance charge shall be computed on the principal balance as determined under RSA 361-A:15, IV(i) or RSA 361-A:16, IV(i) on a daily simple interest basis.

(c) Contracts must have successive periodic payments substantially equal in amount.

361-A:18 Sale Contingent on Financing Approval or Spot Delivery. Prior to a retail buyer taking possession of the motor vehicle, any retail seller who delivers a motor vehicle to a retail buyer before the retail seller has obtained financing approval from a sales finance company or bank shall provide a disclosure containing the following language in a size equal to at least 10-point bold type, which must be signed by the retail buyer:

"The retail seller of the motor vehicle has not obtained financial approval for the terms contained in the retail installment contract from a sales finance company or bank. If the retail seller obtains financial approval from a sales finance company under the terms of the retail installment contract, the sale shall be final and binding on the retail seller and the retail customer. If final approval of the terms of the retail installment contract cannot be obtained from a sales finance company, the retail installment contract shall be canceled. The retail seller shall return to the buyer any consideration received in the transaction, including, but not limited to, any motor vehicle traded in, any deposit, and any fees paid by the buyer. The buyer shall, upon being notified that the retail seller was unable to obtain financing approval, return the motor vehicle to the retail seller."

361-A:19 Balloon Payment Loans.

I. Notwithstanding the provisions of RSA 361-A:17, VII(c), a retail installment contract for a new motor vehicle may provide for a balloon payment.

II.(a) Balloon contracts shall contain a provision requiring the lienholder to accept return of the motor vehicle that secures the balloon loan, without penalty or additional cost, payment, or expense, to the retail buyer in satisfaction of the balloon payment due under the balloon contract.

(b) Collection of any amounts due under the terms of the balloon contract that have accrued during the period of the contract that precedes the balloon payment due date shall not violate the provision contained in subparagraph (a).

(c) If the balloon contract so provides, a disposition fee may be charged to the retail buyer, provided such fee does not exceed $250, or such greater or lesser amount announced by the commissioner to annually adjust the disposition fee based upon changes in the consumer price index for all urban consumers, all items category, of consumer prices compiled and reported by the U.S. Department of Labor, Bureau of Labor Statistics.

(d) Any cost to the retail buyer associated with the return of a motor vehicle under a balloon contract pursuant to this paragraph shall not exceed the total of the disposition fee, excess mileage fee, excess wear and tear fee, if any, and any accrued amounts due in accordance with subparagraph (b).

III. The commissioner is authorized to adopt rules, pursuant to RSA 541-A, to implement the purpose and requirements of this section, including, but not limited to, balloon contract disclosures and balloon payment refinancing disclosures. Any disclosures required by rules adopted by the commissioner pursuant to this paragraph shall be in addition to disclosures required by the federal Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et seq.

IV. Balloon retail installment contracts shall contain a provision that affords retail buyers the option to refinance the balloon payment at an annual percentage rate no greater than the annual percentage rate under the balloon contract. Creditors under this paragraph shall be entitled to deny a refinance request if the retail buyer would not have been eligible for the balloon contract, based on credit history or other credit underwriting standards established by written policy of the creditor. The creditor's credit underwriting standards for refinancing a balloon payment shall be substantially identical to the underwriting standards used by the creditor when the creditor issued a commitment to the borrower to fund the original balloon retail installment contract. Refinancing of balloon payments shall be subject to the requirements of this chapter. The contract evidencing such refinancing shall be deemed a retail installment contract. An estimate of the monthly payment amount for a refinanced balloon payment shall be provided in writing by the creditor to the retail buyer upon the buyer's request. Applications for balloon contracts shall include a notice in at least 10-point bold type that the balloon contract applicant is entitled, upon request, to receive a written estimate of the monthly payment amount for a balloon payment refinancing in accordance with the creditor's then existing refinance programs prior to entering into a balloon contract.

V. A sales finance company may charge an excess mileage fee associated with a motor vehicle that is returned to the lienholder pursuant to paragraph II of this section, provided that no such fee shall be charged when the odometer of the motor vehicle securing the balloon contract indicates the vehicle was driven less than the maximum mileage limit set forth in the balloon contract. Any excess mileage charges payable by the retail buyer shall be clearly set forth in the balloon contract.

VI. A lienholder may assess a fee for excess wear and tear associated with a motor vehicle returned pursuant to paragraph II of this section. Any charges for excess wear and tear payable by the retail buyer shall be clearly set forth in the balloon contract.

361-A:20 Requirements and Prohibitions as to Servicing.

I. The borrower shall receive a notice of assignment from both the current and future holder of the retail installment contract within 15 days of the assignment.

II. Unless the buyer has notice of the assignment of the contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

III. When a buyer pays off a retail installment contract, the licensee shall:

(a) Within 10 days after demand and, in any event, within 21 calendar days of the payoff, release the lien and provide the title or equivalent paperwork to obtain title; and

(b) Not charge additional fees to the borrower to remove additional equipment after payoff.

IV. Within 5 business days of receipt of written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments or the total amount unpaid under such contract, or both, as specified in the request.

V. A buyer shall be given a written or stamped receipt for any payment when made in cash.

VI. Payment shall be effective as of the day it is received by the licensee.

VII. The licensee shall provide either a payment book in which space shall be provided for the record of all payments showing principal, interest, and balance or monthly statements to the borrowers detailing the following:

(a) The date of such loan;

(b) The amount of the principal of such loan;

(c) The total interest charged for the period of such loan;

(d) The nature of the security;

(e) The name and address of the borrower and of the licensee; and

(f) The description of schedule of payments on such loans.

VIII.(a) Within 21 calendar days of the date any ancillary product is canceled, unearned premium refunds received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar ancillary product protecting the interests of the buyer and the holder or either of them.

(b) In this section, the term "date any ancillary product is canceled" shall be the date that the buyer requests the cancellation or a triggering event of the completion of loan such as the payoff or totaling of the vehicle.

(c) The holder of the contract shall provide written notice of such payment to any company that has issued an ancillary product contract the premium of which was financed as part of such retail installment contract. Such notice shall contain the date the retail installment contract was paid in full, the name and last known address of the buyer under the contract, and shall state that pursuant to RSA 361-A a refund by the insurer of any unused prepaid premium is due the buyer upon receipt of the notice. A copy of the notice shall be given to the buyer, or mailed to the buyer's last known address.

IX. The activation of a starter interruption device is equivalent to repossession of the vehicle.

X. Once a vehicle has been repossessed, all fees assessed to the borrower shall cease, except as outlined in RSA 361-A:23, II(d).

361-A:21 Requirements and Prohibitions as to Loan Default.

I. Prior to initiating a repossession, the licensee must send the buyer a written notice of default.

II.(a) The notice of default shall be sent to the buyer 10 days or more after the default.

(b) The notice shall conspicuously state the rights of the buyer upon default and contain the following language in a size equal to at least 10-point bold type: "Notice of Default." The body of the notice shall read: "You may cure your default in (describe transaction in a manner enabling buyer to identify it) by paying to (name and address of creditor) (amount due) before (date which is at twenty-one days after notice is mailed). If you pay this amount within the time allowed, you are no longer in default and may continue on with the transaction as though no default had occurred. If you do not cure your default by the date stated above, the said creditor may sue you to obtain a judgment for the amount of the debt or, if applicable, may take possession of the collateral. If the creditor takes possession of the collateral, if any, you may get it back by paying the full amount of your debt plus any reasonable expenses incurred by the said creditor if you make the required payment within twenty days after he or she takes possession."

361-A:22 Requirements and Prohibitions as to the Notice of Disposition.

I. After repossession, if the vehicle is not accepted as satisfaction in full, the licensee must send the borrower a notice of disposition prior to the sale of the vehicle.

II. The notice of disposition must contain the following information:

(a) Description of the borrower and the licensee;

(b) Description of the collateral that is the subject of the intended disposition;

(c) The method of intended disposition;

(d) Information stating that the borrower is entitled to an accounting of the unpaid indebtedness;

(e) Stating the time and place of a public disposition or the time after which any other disposition is to be made;

(f) A description of any liability for a deficiency of the borrower;

(g) The amount that must be paid to the licensee to redeem the collateral; and

(h) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

361-A:23 Requirements and Prohibitions as to the Explanation of Calculation after Disposition.

I. The licensee is required to determine the deficiency or surplus owed after disposition of the vehicle. If the borrower is entitled to a surplus, an explanation of calculation and surplus funds shall be provided to the borrower within 21 calendar days of the disposition of the vehicle.

II. The required written explanation of calculation shall contain the following information:

(a) The total amount of obligations secured by the retail installment contract calculated as of a specified date.

(b) The amount of proceeds of the disposition.

(c) The total amount of the obligations after deducting the amount of proceeds.

(d) The out-of-pocket expenses incurred for retaking, holding, preparing for disposition, processing, and disposing of the collateral.

(e) The amount of credits to which the borrower is known to be entitled.

(f) The amount of the surplus or deficiency, which is the calculation of the sum of (c) and (d) minus (e).

361-A:24 Order to Show Cause.

I. The commissioner may issue an order requiring a person to whom any license has been granted or any person under the commissioner's jurisdiction to show cause why the license should not be revoked, suspended, or penalties imposed, or both, for violations of this chapter.

II. The commissioner may, by order, deny, suspend, or revoke any license or application and bar any person from licensure if the commissioner finds that the order is in the public interest and the applicant, respondent, or licensee, any partner, officer, member, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, respondent, or licensee:

(a) Has filed an application for licensing which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) Has made a false or misleading statement to the commissioner or in any reports to the commissioner;

(c) Has made fraudulent misrepresentations, has circumvented or concealed, through whatever subterfuge or device, any of the material particulars required to be stated or furnished to a borrower under the provisions of this chapter;

(d) Has failed to supervise its agents, managers, or employees;

(e) Is the subject of an order entered within the past 5 years by this state, any other state, or federal regulator denying, suspending, or revoking licenses or registration;

(f) Is permanently, preliminarily, or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of lending or collection activities;

(g) Is not qualified on the basis of such factors as experience, knowledge, and financial integrity;

(h) Has engaged in dishonest or unethical practices in the conduct of making retail installment transactions or collecting on retail installment contracts;

(i) Has violated any provision in this chapter or any rule or order thereunder, any provision in RSA chapter 361-E or any rule or order thereunder, or has violated any federal laws or regulations applicable to retail installment transactions, including the Federal Truth in Lending Act;

(j) Has made an unsworn falsification in violation of RSA 641:3 to the commissioner; or

(k) For other good cause shown.

III.(a) The order shall give reasonable notice of the opportunity for a hearing and shall state the reasons for the issuance of the order.

(b) Valid delivery of such order shall be by hand or certified mail at the last known principal office of the licensee or respondent or to a principal, control person, or legal representative of the licensee or respondent.

(c) A hearing, if requested, shall be scheduled not later than 10 calendar days after the written request for such hearing is received by the commissioner.

(d) Within 20 calendar days from the date of the hearing the commissioner shall enter an order making such disposition of the matter as the facts require.

(e) If the person to whom an order to show cause is issued fails to appear at a hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the order to show cause, the allegations of which may be deemed to be true.

(f) If the person to whom an order to show cause or other order is issued fails to request a hearing within 30 calendar days of receipt or valid delivery of the order and no hearing is ordered by the commissioner, then such person shall be deemed in default, and the order shall, on the 31st day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

IV. The department may take action for immediate suspension of a license pursuant to RSA 541-A.

V. If a licensee is a partnership, association, corporation, or entity however organized, 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.

VI. If the commissioner finds that any licensee or applicant for license is no longer in existence or has ceased to do business as a retail seller or sales finance company, or cannot be located after reasonable search, the commissioner may by order revoke the license, impose penalties, or deny the application.

361-A:25 Cease and Desist Orders.

I. The department may issue a cease and desist order against any person who it has reasonable cause to believe has violated or is about to violate the provisions of this chapter or any rule or order under this chapter.

II.(a) The order shall be calculated to give reasonable notice of the opportunity for a hearing and shall state the reasons for the issuance of the order.

(b) Valid delivery of such order shall be by hand or certified mail at the last known principal office of the person.

(c) A hearing, if requested, shall be held not later than 10 days after the written request for such hearing is received by the commissioner.

(d) Within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as issued or as amended by the commissioner.

(e) If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him or her upon consideration of the cease and desist order, the allegations of which may be deemed to be true.

(f) If the person to whom a cease and desist order is issued fails to request a hearing within 30 calendar days of receipt or valid delivery of such order and no hearing is ordered by the commissioner, then such person shall likewise be deemed in default, and the order shall, on the 31st day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

III. If any person refuses to obey the commissioner's order, an action may be brought by the attorney general on the commissioner's behalf in any superior court in this state to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action, an order or judgment may be entered awarding a temporary or permanent injunction, and awarding the commissioner or the attorney general or both costs in bringing such action. Any person who fails to comply with such injunction shall be subject to a fine not exceeding $10,000 or imprisonment, or both.

361-A:26 Powers of the Commissioner.

I. The commissioner shall have the power to subpoena witnesses and administer oaths in any adjudicative proceeding and to compel, by subpoena duces tecum, the production of documents, papers, books, records, files, and other evidence, whether electronically stored or otherwise, before the commissioner in any matter over which the commissioner has jurisdiction, control, or supervision pertaining to the provisions of this chapter. The commissioner 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 commissioner may apply to any justice of the superior court who, after proof of such refusal, shall issue such citation, directed to any sheriff, for the arrest of such person, and, upon such person's being brought before such justice, proceed to a hearing of the case. Any person who refuses to comply with a subpoena shall be subject to a fine not exceeding $10,000 or by imprisonment, or both.

II. The commissioner may adopt rules, pursuant to RSA 541-A, relative to the administration and enforcement of this chapter.

III. The commissioner may prepare, alter, or withdraw such forms as are necessary to comply with the provisions of this chapter, including personal disclosure statements and authorizations to meet the requirements of this chapter.

IV. The commissioner may issue, amend, or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

V. The commissioner may, for good cause shown, abate all or a portion of delinquency penalties assessed under this chapter.

VI. All actions taken by the commissioner pursuant to this chapter shall be taken only when the commissioner finds such action necessary or appropriate to the public interest or for the protection of consumers and consistent with the purposes fairly intended by the policy and provisions of this chapter.

VII. The commissioner shall have the authority to investigate conduct that is or may be in violation of this chapter, may hold hearings relative to such conduct, and may order restitution for a person adversely affected by such conduct.

VIII. In adopting rules, preparing forms, setting standards, and performing examinations, investigations, and other regulatory functions authorized by the provisions of this chapter, the commissioner may cooperate, and share information pursuant to confidentiality agreements, with regulators in this state and with regulators in other states and with federal regulators in order to implement the policy of this chapter in an efficient and effective manner and to achieve maximum uniformity in the form and content of applications, reports, and requirements for small loan lenders, where practicable.

IX. The commissioner may set fees to be charged to cover the reasonable costs of copying documents and producing reports.

X. The commissioner may share information with state and federal regulators, and may share information with law enforcement agencies for the purposes of criminal investigations.

361-A:27 Penalties.

I. Any person or the members, officers, directors, agents, and employees thereof who knowingly violate any provision of this chapter shall be guilty of a misdemeanor if a natural person, or a felony if any other person.

II. Any person violating the provisions of RSA 361-A:15 through RSA 361-A:23 or engaging in the business of a sales finance company without a license if a license is required under this chapter shall be barred from recovering any finance charge, delinquency, or collection charge on the contract. Where no finance charge is payable under the terms of the contract, a person engaging in the business of a sales finance company without a license shall be barred from recovering any amount in excess of the wholesale market value of the vehicle, if the vehicle was purchased by the seller at a wholesale auction or other wholesale outlet, or the trade-in value of the vehicle if the seller acquired the vehicle in trade. Such value shall be that quoted for New Hampshire or the New England region in a value quotation publication generally recognized by the motor vehicle industry and as specified by the commissioner in rules adopted pursuant to RSA 541-A.

III. Any person who knowingly violates any provision of this chapter, or rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension or revocation of any registration or license, or an administrative fine not to exceed $2,500 for each violation in lieu of or in addition to such suspension or revocation as may be applicable under this chapter for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

IV. Any person who negligently violates any provision of this chapter, or rule or order of the commissioner may, upon notice and opportunity for hearing, except where another penalty is expressly provided, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed $1,500 for each violation, in lieu of or in addition to suspension or revocation as may be applicable under this chapter for violation of the provision to which such rule or order relates. Each of the acts specified shall constitute a separate violation and each such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

V. Every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in any act constituting a violation of this chapter, and every licensee or person acting as a common law agent who materially aids in any act constituting a violation of this chapter, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed $2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed. No person shall be liable under this paragraph who sustains the burden of proof that such person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

VI. Any person who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority shall be guilty of a misdemeanor.

VII. Any person who engages in the business of a sales finance company or retail seller in this state or with consumers located in this state without first obtaining a license, shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever on any purported retail installment contract and any such contract shall be null and void.

VIII. If charges in excess of those permitted by this chapter shall be charged, contracted for, or received, except as a result of an accidental or bona fide error, the contract of loan shall be void and the lender shall have no right to collect or receive any charges, interest, or recompense whatsoever.

IX. Failure to comply with the provisions of RSA 361-A:4 and rules adopted under that section shall be cause for denial of future license applications.

X. If the commissioner finds that any licensee is no longer in existence or has ceased to do business as a small loan lender or cannot be located after reasonable search, the commissioner may by order revoke the license or impose penalties.

XI. Any person who willfully violates any provisions of RSA 361-A:13, I or II or a cease and desist order or injunction issued pursuant to RSA 361-A:25 shall be guilty of a class B felony. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction of any other offense.

XII. The attorney general on the commissioner's behalf, may, with or without prior administrative action by the commissioner, bring an action against any person in any superior court in this state to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner or attorney general to post a bond. Any person who fails to comply with an injunction, restraining order, or writ of mandamus shall be subject to a fine not exceeding $10,000 or imprisonment, or both. In a proceeding in superior court under this paragraph where the state prevails, the commissioner and the attorney general shall be entitled to recover all costs and expenses of investigation, and the court shall include the costs in its final judgment.

330:2 References Corrected; Guaranteed Asset Protection Waivers. Amend RSA 361-E:2, I to read as follows:

I. In this chapter:

(a) "Administrator" means a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs.

(b) "Borrower" means any retail buyer, as defined in RSA [~~361-A:1, IX~~] ***361-A:1, XXIII***.

(c) "Creditor" means:

(1) Any retail seller, as defined in RSA [~~361-A:1, XII~~] ***361-A:1, XXVI***; or

(2) Any sales finance company, as defined in RSA [~~361-A:1, XIII~~] ***361-A:1, XXVII***; or

(3) The assignees of any of the foregoing to whom the credit obligation is payable.

(d) "Finance agreement" means a retail installment contract for the purchase of a motor vehicle governed by RSA 361-A.

(e) "Free look period" means the period of time from the effective date of the guaranteed asset protection (GAP) waiver until the date the borrower may cancel the contract without penalty, fees, or costs to the borrower.

(f) "Guaranteed asset protection waiver" or "GAP waiver" means a contractual agreement wherein a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement shall be part of, or a separate addendum to, the finance agreement.

(g) "Insurer" means an insurance company licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(h) "Motor vehicle" means a motor vehicle, as defined in RSA [~~361-A:1, VII~~] ***361-A:1, XVI***.

(i) "Person" includes an individual, company, association, organization, partnership, business trust, corporation, limited liability company, and every other form of legal entity.

330:3 Reference Corrected; Pawnbrokers. Amend RSA 398:2, II to read as follows:

II. In excess of 4 motor vehicles or titles to motor vehicles, as defined in RSA [~~361-A:1, VII~~] ***361-A:1, XVI***;

330:4 Repeal. RSA 261:56-a, relative to vehicles sold to Massachusetts residents, is repealed.

330:5 Effective Date.

I. Sections 1-3 of this act shall take effect July 1, 2024.

II. The remainder of this act shall take effect 30 days after its passage.

Approved: August 02, 2024
Effective Date:
I. Sections 1-3 effective July 1, 2024
II. Remainder effective September 1, 2024