TITLE 6. BANKS AND BANKING
CHAPTER 10-B. LOUISIANA MOTOR VEHICLE SALES FINANCE ACT

Current through 2010 Regular Session

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TITLE 6. BANKS AND BANKING
CHAPTER 10-B. LOUISIANA MOTOR VEHICLE SALES FINANCE ACT

Current through 2010 Regular Session

PART I. GENERAL PROVISIONS AND DEFINITIONS

§969.1. Short title

This Chapter shall be known and may be cited as the "Louisiana Motor Vehicle Sales Finance Act".

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.2. Scope

A. Subject to the provisions of Subsections B and C of this Section, the parties to a motor vehicle credit transaction may agree that the law of the place where the motor vehicle credit transaction is entered into or the law of the residence of the consumer shall apply.

B. Whenever an action is brought in this state to enforce rights arising from a motor vehicle credit transaction wherever made, and whatever state's law shall contractually govern, the extender of credit shall, where applicable, reduce the charges sought to be collected so that they do not exceed those provided in this Chapter. This requirement applies only to then unpaid charges sought to be collected. The extender of credit shall not be required to refund or credit the consumer for any charges previously paid that are permitted under the laws of the chosen forum, but which are in excess of those permitted under this Chapter.

C. Except as otherwise provided herein, the agreements by a consumer to consent to the jurisdiction of another state and fix venue are invalid with respect to motor vehicle credit transactions, or modifications thereof, to which this Chapter applies.

D. All fees and charges authorized under this Chapter, whether or not such fees and charges constitute or are considered to be loan finance charges or credit service charges, shall be deemed to be "material to the determination of the interest rate" for purposes of exportation to consumers residing in other states under the most favored lender doctrine of federal law.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.3. Exclusions

A. Except as provided in Subsection B of this Section, this Chapter does not apply to any of the following:

(1) Extensions of credit to business entities, including government or governmental agencies or instrumentalities.

(2) Extensions of credit primarily for business, commercial, or agricultural purposes.

(3) Open-end credit transactions, including without limitation, revolving loan and lender credit card transactions that may involve the secured purchase money financing of a motor vehicle.

(4) Consumer credit transactions subject to the Louisiana Consumer Credit Law, R.S. 9:3510 et seq.

(5) Credit transactions by federally and state-chartered credit unions to their members.

(6) Federally related mortgage loans subject to R.S. 9:3503 et seq. and 12 U.S.C. 1735F (7).

B. All persons financing the purchase or acquisition of a motor vehicle, irrespective of whether the transaction otherwise is subject to this Chapter, shall comply with the requirements of R.S. 32:1251 et seq. and the rules and regulations of the Louisiana Motor Vehicle Commission pertaining to advertising.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.4. Waiver, agreement to forego rights

A consumer may not waive or agree to forego rights or benefits under this Chapter except that a claim, if disputed in good faith, may be settled by compromise, agreement, or arbitration.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.5. Repealed by Acts 2001, No. 1066, §1.

§969.6. Definitions

As used in this Chapter:

(1) "Administrator" means any person, except an employee of an administrator, who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with debt waiver or debt forgiveness agreements.

(2) "Amount deferred" means the cash price subtracting any down payment under a consumer credit sale, plus any other amounts for goods or services including without limitation, any negative equity trade-in allowance, insurance, extended warranty, service contract, and other fees

and charges that are financed by the extender of credit under the transaction, and included in the principal balance of the consumer's indebtedness subject to credit service charges.

(3) "Amount financed" means the amount borrowed under a consumer loan, plus any other amounts for goods or services including without limitation, any negative equity trade-in allowance, insurance, extended warranty, service contract, notary fees, license, title, filing and lien release fees, and other fees and charges that are financed by the extender of credit under the transaction, and included in the principal balance of the consumer's indebtedness subject to loan finance charges.

(4) "Cash price" means the price for which the seller would have sold the motor vehicle to the consumer and the consumer would have bought from the seller if such sale had been a sale for cash instead of on credit. The cash price may include any sales taxes, documentary fees, notary fees, license, title, filing and lien release fees, negative equity trade-in allowances, insurance premiums, extended warranty, service contract, and similar fees, and charges for delivery, installation, repair, alteration, or improvement to the vehicle.

(5) "Commission" means the Louisiana Motor Vehicle Commission.

(6) "Consumer" means a natural person who enters into a consumer loan or consumer credit sale of a motor vehicle to be used primarily for personal, family, or household purposes.

(7) "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include insurance indemnifying the extender of credit against loss due to the debtor's default and non-filing insurance.

(8) "Consumer credit sale" means the sale of a motor vehicle on credit under which the seller acquires a purchase money security interest in the purchased vehicle, and incident to which a credit service charge is charged and the consumer is permitted to defer all or part of the purchase price or other consideration in two or more installments excluding the down payment. A "consumer credit sale" does not include a lease of a motor vehicle under any circumstance, whether or not the lease constitutes a true lease or a financed lease within the context of the Louisiana Lease of Movables Act, R.S. 9:3301 et seq. A consumer credit sale may be secured by other collateral in addition to the purchased vehicle.

(9) "Consumer loan" means a loan of money or its equivalent made by a lender, the proceeds of which are used by the consumer to purchase or refinance the purchase of a motor vehicle, or which proceeds are used for personal, family, or household purposes, including debts created by the use of a lender credit card, revolving loan account, or similar arrangement, as well as insurance premium financing, with the lender acquiring a purchase money security interest in the purchased motor vehicle. A consumer loan may be secured by other collateral in addition to the purchased vehicle. The provisions of this Paragraph shall not apply to a consumer loan made pursuant to the Louisiana Deferred Presentment and Small Loan Act, R.S. 9:3578.1 et seq.

(10) "Contract" means the consumer's retail installment contract, note, agreement, or other evidence of indebtedness executed in connection with a motor vehicle credit transaction.

(11) "Contract rate" means the interest rate factor applied to compute precomputed interest

or simple interest under the transaction.

(12) "Credit health and accident insurance" means disability insurance purchased in conjunction with a motor vehicle credit transaction which provides for a monthly benefit sufficient to pay all or part of the required monthly payment, during the continued disability of the insured, over the term of coverage.

(13) "Credit life insurance" means term life insurance purchased in conjunction with a motor vehicle credit transaction which provides a death benefit payable to the lender, or to the insured consumer's beneficiary to the extent the death benefit exceeds the amount necessary to fully pay and satisfy the transaction, in the event of the insured consumer's death during the term of coverage.

(14) (a) "Credit service charge" means the sum of the following:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the seller as a requirement of the extension of credit, including any of the following types of charges that are applicable: interest; time price differential; service; carrying or other charge, however denominated; points and discount fees; and premium or other charge for any guarantee or insurance protecting the extender of credit against the consumer's default or other credit loss.

(ii) Charges paid by the consumer for investigating the consumer's credit worthiness.

(b) The term does not include default charges; delinquency charges; charges for checks returned for having nonsufficient funds; documentation fees; manufactured housing appraisal and title search fees; other fees and charges permitted under this Chapter; and any additional fees and charges that the seller agrees to finance under the transaction that are not considered to be a finance charge under 12 C.F.R. 226.4.

(15) "Debt waiver" or "debt forgiveness" is an agreement whereby an extender of credit agrees with the consumer to waive any unpaid balance on a consumer loan, consumer credit sale or lease due to physical damage, total loss or constructive loss or unrecovered theft to the covered collateral secured by an eligible security device.

(16) "Down payment" means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of a motor vehicle purchased under a consumer credit sale.

(17) "Extender of credit" or "creditor" means a seller in a consumer credit sale, or a lender in a consumer loan. An "extender of credit" or "creditor" also includes an assignee or transferee of the consumer's contract, but does not include a bona fide pledgee of the creditor.

(18) "Federally related mortgage loan" means a loan secured by a first lien or mortgage on one-to-four family residential immovable property subject to 12 U.S.C. 1735F(7).

(19) "GAP coverage" means a contract or insurance policy that covers a consumer's deficiency balance between the net payoff of the consumer's loan retail installment sales contract

at the time of a loss and the amount paid by the consumer's primary insurance after a vehicle is deemed a total loss due to any direct or accidental physical damages or unrecovered theft which may be in the form of the following:

(a) Guaranteed auto protection offered by a property and casualty company licensed and regulated by the Department of Insurance.

(b) Guaranteed auto protection offered by a property residual value insurer licensed and regulated by the Department of Insurance.

(c) Debt waiver or debt forgiveness agreements issued by a lender licensed or regulated by the commission.

(20) "Lender" means the originator of credit under a consumer loan, as well as any assignee or transferee of the consumer's contract.

(21) (a) "Loan finance charge" means the sum of the following:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the lender as a requirement of the extension of credit, including any of the following types of charges that are applicable: interest, and any amount payable under a point, discount, or other system of charges, however denominated.

(ii) Charges paid by the consumer for investigating the consumer's credit worthiness.

(b) The term does not include fees paid to a non-affiliated loan broker, default charges, deferral charges, delinquency charges, charges for checks returned for having nonsufficient funds, manufactured housing appraisal, title search fees and closing costs, other fees and charges permitted under this Chapter, and any additional fees and charges that the lender agrees to finance under the transaction that are not considered to be a finance charge under 12 C.F.R. 226.4.

(22) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure meeting all of the requirements of this Subsection except the size requirements and with respect to which the manufacturer voluntarily files a certificate required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(23) **(a)** "Motor vehicle" means any new or used transportation device, including automobiles, motorcycles, trucks, and other vehicles that are operated over the public highways and the streets of this state, but does not include traction engines, boat trailers, road rollers, implements of husbandry, and other agricultural vehicles. A manufactured home is deemed to be a "motor vehicle" for purposes of this Chapter only if it is anticipated at the time of the transaction that the manufactured home will not be immobilized pursuant to R.S. 9:1149.4.

(b) "Motor vehicle" for purposes of GAP coverage means self-propelled or towed vehicle designed for personal use, including but not limited to automobiles, trucks, motorcycles, recreational vehicles, all-terrain vehicles, snowmobiles, campers, boats, personal watercraft, and motorcycle, boat, camper, and personal watercraft trailers.

(24) "Motor vehicle credit transaction" means a consumer loan or a consumer credit sale involving a Louisiana consumer, or that is otherwise made subject to this Chapter.

(25) "Person" means an individual or corporation, partnership, limited liability company, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein.

(26) "Precomputed transaction" means a motor vehicle credit transaction under which loan finance charges or credit service charges are computed in advance over the entire scheduled term of the transaction and capitalized into the face amount of the contract.

(27) "Prepaid finance charge" in connection with a simple interest transaction means any loan finance charge or credit service charge that is paid separately in cash or by check before or at consummation of the transaction, or withheld from the proceeds of the transaction at any time. Prepaid finance charges may be funded at the consumer's request by increasing the original principal balance of the consumer's contract, with such increased principal amount, including prepaid finance charges, being subject to simple interest over the contract term. Prepaid finance charges shall not be included in the contract rate of interest.

(28) "Pro rata" refers to a method of computing deferral charges by dividing the precomputed loan finance charge or precomputed credit service charge by the total number of days in the contract term and multiplying the sum by the number of days that are deferred.

(29) "Salesman" or "agent" means any person licensed by the commission whose duties include the sale of a debt waiver or debt forgiveness agreement on behalf of the administrator.

(30) "Seller" means the seller of a motor vehicle, including the seller of a motor vehicle under a consumer credit sale, as well as any assignee or transferee of the consumer's contract.

(31) "Simple interest transaction" means a motor vehicle credit transaction under which loan finance charges or credit service charges are assessed by application of a contractual simple interest rate or rates to the unpaid principal balance of the contract.

(32) "Supervised financial organization" means a banking, thrift, or similar organization organized, certified, and supervised by an agency of the United States of America, the state of Louisiana, or any other state pursuant to the banking, currency, and related laws of the United States of America, the state of Louisiana, or any other state.

(33) "Total sum payable under such contract including all loan finance charges and credit service charges" means the total sum of all scheduled payments under the contract assuming that each payment is made on its due date.

(34) "Free-look period" means the period of time from the effective date of the debt waiver or debt forgiveness agreement until the date the consumer may cancel the contract

with a full refund. This period of time shall not be less than thirty days.

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

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2004, No. 70, §1; Acts 2005, No. 255, §1, **Acts 2010, No 374, §1, eff. August 15, 2010.**

§969.7. Terms; construction; additional fees and charges

A. As a general rule of construction, persons may look to comparable rules, definitions, and principles under the Federal Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z of the Board of Governors of the Federal Reserve System, 12 C.F.R. 226.1 et seq., for guidance in further defining and interpreting terms and concepts that are not otherwise defined or specified under the provisions of this Chapter. Specifically, those fees and charges that are not classified as or considered to be finance charges under 12 C.F.R. 226.4 are not considered to be loan finance charges or credit service charges for purposes of this Chapter.

B. Except as limited in amount or prohibited by this Chapter, an extender of credit may impose and collect additional fees and charges contractually provided for under the consumer's promissory note, installment sales contract, or credit agreement.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.8. Construction against implicit repeal

This Chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Acts 1999, No. 794, §1, eff. July 2, 1999.

PART II. MAXIMUM CHARGES

§969.9. Consumer loans

A. The maximum loan finance charge for any consumer loan that may be charged, contracted for, or received may equal either Paragraph (1) or (2) of this Subsection but not exceed:

(1) The sum of all of the following:

(a) Thirty-six percent per annum for that portion of the unpaid principal amount of the loan not exceeding one thousand four hundred dollars.

(b) Twenty-seven percent per annum for that portion of the unpaid principal amount

of the loan exceeding one thousand four hundred dollars and not exceeding four thousand dollars.

(c) Twenty-four percent per annum for that portion of the unpaid principal amount on the loan exceeding four thousand dollars and not exceeding seven thousand dollars.

(d) Twenty-one percent per annum for that portion of the unpaid principal amount of the loan exceeding seven thousand dollars.

(2) The credit service charge rate that would otherwise apply under R.S. 6:969.10 to a comparable consumer credit sale of a Class 2, Class 3, or Class 4 motor vehicle, as applicable, and regardless of amount.

B. This Section does not limit or restrict the manner of contracting for loan finance charges whether by way of precomputed interest, simple interest, or otherwise, so long as the annualized loan finance charge rate computed on an actuarial or United States Rule basis over the entire scheduled term of the transaction, assuming that all payments will be made when due and disregarding the possible effects of early prepayment or acceleration of maturity, does not exceed the maximum rates permitted in this Chapter. Demand loans shall have a presumed term of five years.

C. For the purposes of this Section, the term of a consumer loan commences with the date the contract is signed or the funds advanced, whichever occurs first. Differences in the lengths of months may be disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

D. Notwithstanding any provision of Subsection A, the extender of credit may contract for and receive a minimum loan finance charge of not more than fifteen dollars when the amount financed does not exceed two hundred dollars, or twenty-five dollars when the amount financed exceeds two hundred dollars; such charge shall be in lieu of all other loan finance charges.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.10. Consumer credit sale

A. Except as otherwise provided by R.S. 6:969.11, the maximum credit service charge for any consumer credit sale that may be charged, contracted for, or received may not exceed:

(1) Class 1. For any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made: Eighteen percent per annum.

(2) Class 2. For any new motor vehicle not in Class 1, and any used motor vehicle designated by the manufacturer by year model of the same or not more than two years prior to the year in which the sale is made: Twenty-four percent per annum.

(3) Class 3. For any used motor vehicle not in Class 2 and designated by the

manufacturer by year model not more than four years prior to the year in which the sale is made: Twenty-seven percent per annum.

(4) Class 4. For any used motor vehicle not in Class 2 or Class 3 and designated by the manufacturer by year model more than four years prior to the year in which the sale is made: Thirty-three percent per annum.

B. This Section does not limit or restrict the manner of contracting for credit service charges under a consumer credit sale, whether by way of precomputed interest, simple interest, or otherwise, so long as the annualized credit service charge rate computed on an actuarial or United States Rule basis over the entire scheduled term of the transaction, assuming that all payments will be made when due and disregarding the possible effects of early prepayment or acceleration of maturity, does not exceed the maximum rates permitted in this Chapter.

C. For purposes of this Section, the term of a consumer credit sale commences with the date the contract is signed or the sale of the motor vehicle is complete, whichever occurs first. Differences in lengths of months may be disregarded and a day may be counted as one-thirtieth of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not constantly used to obtain a greater yield than would otherwise be permitted.

D. Notwithstanding Subsection A, the extender of credit may contract for and receive a minimum credit service charge of not more than fifteen dollars when the amount deferred does not exceed two hundred dollars, or twenty-five dollars when the amount deferred exceeds two hundred dollars.

§969.11. Maximum charges after negotiations

A. The obligation arising out of any consumer credit sale may be evidenced by a written contract which may provide for a credit service charge not in excess of the maximum loan finance charge rate which could be charged, contracted for, or received in a consumer loan where the amount deferred is the same as the amount financed and the term is a corresponding term.

B. (1) Such written contract must be transferred or assigned to an assignee that is either licensed under this Chapter, or that is exempt from licensing under R.S. 6:969.36, within thirty five days from the date of making.

(2) If such assignment is not made within the said time limit, the seller shall do all of the following:

(a) Notify the consumer that the contract, note, or agreement was not transferred or assigned.

(b) Credit the obligation with any amounts contracted for in excess of the credit service charge authorized by R.S. 6:969.10. Such computation shall be made as of the date of making and the consumer shall be notified of such credit.

(c) Provide the consumer, prior to the first installment due date, with a new payment schedule reflecting the change in terms.

(d) Notify the consumer of the address where payments are to be made if such address is different from the address previously given to the consumer.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.12. Maximum charges after maturity

In the case of a precomputed transaction which is unpaid at contractual maturity, the rate of the loan finance charge or the credit service charge for the period beginning as of contractual maturity until payment in full may not exceed the rate of the loan finance charge or the credit service charge previously agreed to by the extender of credit and the consumer at the time the motor vehicle credit transaction was entered into.

Acts 1999, No. 794, §1, eff. July 2, 1999

§969.13. Leap years

The effects of a leap year may be disregarded for purposes of determining whether the annualized loan finance charge rate or credit service charge rate exceeds the maximum rate limitations provided in this Part.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.14. Variable rates

An extender of credit may enter into variable rate motor vehicle credit transactions under this Chapter in the manner provided under R.S. 6:242(A)(2).

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.15. Maximum delinquency charges

A. The parties to a motor vehicle credit transaction may contract for the payment of a delinquency charge on any installment or other regular payment not paid in full within ten days after its scheduled or deferred due date in either one of the following amounts:

(1) Five percent of the amount of the installment in default, or ten dollars, whichever is greater.

(2) The deferral charge that would be permitted to defer the unpaid amount of the delinquent installment for the period that it is delinquent.

B. (1) A delinquency charge may be collected only once on an installment or other payment however long it remains delinquent. No such delinquency charge may be collected if the installment or other payment has been deferred and a deferral charge has been paid or incurred, provided that the deferred payment is paid within ten days of its deferred date. Such a delinquency charge may be collected at the time it accrues or at any time thereafter.

(2) No such delinquency charge may be collected on an installment or other regular payment that is paid in full within ten days after its scheduled due date even though an earlier maturing installment or other payment or a delinquency charge on an earlier installment or other payment may not have been paid in full. For purposes of determining delinquency, payments are deemed to be applied first to current installments or other payments due and then to delinquent installments or other payments and then to delinquency and other charges.

(3) An extender of credit is prohibited from levying or collecting any delinquency charge on a payment when the only delinquency is attributable to delinquency charges assessed on earlier installments, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period.

(4) Nothing in this Section shall be construed to prohibit the extender of credit from assessing and collecting a loan finance charge or credit service charge on any delinquency or deferral charges not paid when due. Such loan finance charges or credit service charges shall not exceed the contract rate of interest charged on the motor vehicle credit transaction.

C. If two installment payments or parts thereof of a precomputed transaction are in default for ten days or more, the extender of credit may, upon first giving the consumer written notice, elect to convert the precomputed transaction into a simple interest transaction. The notice must state the exact date on which the conversion will occur, the loan finance charge or credit service charge rate to be charged under the simple interest transaction, the balance due at the time of the conversion, and whether or not there will be a balloon payment. In this event, the extender of credit shall make a rebate pursuant to the provisions on rebate upon prepayment as of the maturity date of a delinquent installment or other regular payment, and thereafter may make a loan finance charge or credit service charge as authorized by this Part. The amount of the rebate shall not be reduced by the amount of any minimum loan finance charge or minimum credit service charge as provided in this Part; however, the extender of credit may deduct a prepayment charge as provided in R.S. 6:969.20(A).

D. An extender of credit may contractually reserve the right to prospectively increase the simple interest rate under a motor vehicle credit transaction upon or at any time following the consumer's default. However, such a default interest rate shall not exceed the loan finance charge or credit service charge rate, as applicable, and as authorized in this Part.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2003, No. 337, §1.

§969.16. Maximum deferral charges

A. With respect to a precomputed transaction, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the extender of credit may make and collect a charge not exceeding the contract rate previously stated to the consumer calculated without regard to differences in the lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter. Deferral charges on a precomputed transaction may be computed on a pro rata basis or any other method of calculation that does not yield a greater sum than the maximum rates permitted in this Part. In lieu of the above, the entire unpaid balance of the transaction may be deferred by charging an amount equal to the contract rate of interest under the transaction times the balance at the time of deferral for the period of deferral. In such a case, the transaction maturity date will be extended by the number of months that the balance is deferred.

B. The parties may agree in writing at the time of a precomputed transaction that if an installment is not paid within ten days after its due date, the extender of credit may unilaterally grant a deferral and make charges as provided in this Section. No deferral charge may be made for a period after the date that the extender of credit elects to accelerate the maturity of the agreement. A delinquency charge made by the extender of credit on an installment may not be retained if a deferral charge is made pursuant to this Section with respect to the period of delinquency.

C. In addition to the continued assessment of loan finance charges or credit service charges that may be assessed on the outstanding balance of a simple interest transaction, the parties may before or after default agree in writing to a deferral of all or part of one or more unpaid installments, and the extender of credit may make and collect an additional deferral charge in an amount not to exceed twenty-five dollars. This deferral charge may be collected at the time it is assessed or at any time thereafter.

D. The extender of credit, in addition to the deferral charge, may make appropriate charges for insurance for the extended period and the amount of these charges which is not paid in cash may be added to the amount for the purpose of calculating the deferral charge.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.17. Charges for checks returned for insufficient funds

The parties in a motor vehicle credit transaction may contract for an additional charge to be assessed if the consumer tenders a check in payment or a payment by electronic means and such check or electronic payment is returned from any bank, savings and loan association, thrift institution, credit union, or any other organization or institution authorized to issue checks, drafts, or similar negotiable instruments or electronic payments, due to insufficient credit or funds in the account for payment of the check or electronic payment in full upon its presentation, or due to account closure, stop payment, drawn on uncollected funds, or any other reason for which the instrument or electronic payment is not paid. The additional charge shall be five percent of the amount of the check or electronic payment, but in no case shall this charge exceed fifteen dollars. The charge shall be in addition to any delinquency charge assessed under the provisions of R.S. 6:969.15. For the purposes of this Section, the phrase "due to insufficient credit or funds" means

a check or electronic payment returned unpaid for any reason.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2004, No. 65, §1; Acts 2008, No. 476, §1.

§969.18. Documentation and compliance fees; notary fees; transfer of equity and other fees; disclosure

A. (1) The extender of credit may charge the consumer up to a thirty-five dollar documentation fee for services performed in documenting a motor vehicle credit transaction.

(2) The seller, who may also be an extender of credit, may, in connection with any retail sale, including but not limited to a retail installment transaction, charge a fee for credit investigation, compliance with federal and state law, preparation of the documents necessary to perfect or satisfy a lien upon the objects sold, and any other functions incidental to the titling of the retail sale. The maximum amount permitted to be charged shall be one hundred dollars.

(3) The seller or extender of credit may additionally charge the consumer a convenience fee, as provided by R.S. 47:532.1(A)(7)(c), for services performed in obtaining a motor vehicle license or title on the consumer's behalf.

(4) The fees provided for in this Section are not considered to be additional loan finance charges or credit service charges under this Chapter and are nonrefundable and not subject to rebate.

(5) The seller or extender of credit may charge the consumer fees and expenses for electronic lien and title services or E.L.T. services, pursuant to R.S. 32:707.2, provided in connection with a motor vehicle credit transaction. (Acts 2010, No. 65, §1, eff. June 1, 2010)

(6) The extender of credit may charge for any fees and expenses incurred for flood determination and flood zone monitoring services in connection with the financing of a manufactured home. (Acts 2010, No. 366, §1 and §2, eff. January 1, 2011.)

B. A seller or extender of credit may charge the consumer a fifteen dollar fee for notarizing acts of sale, applications for license and title, and such other documents that are required to be notarized, which fee is not considered an additional loan finance charge or credit service charge, and which fee is nonrefundable and not subject to rebate. Under no circumstances may the amount of notary fees charged in a single transaction exceed fifteen dollars in the aggregate.

C. A consumer may transfer his equity in the secured motor vehicle at any time to another person upon written agreement by the then holder of the consumer's contract, but in such event the holder shall be entitled to receive a transfer of equity fee not to exceed twenty-five dollars.

D. In connection with a motor vehicle credit transaction under which the consumer has the option to transfer title and ownership of the secured motor vehicle to the seller, the lender, or its assignee, at any time during the credit term, or at the maturity thereof, the extender of credit may permissibly contract for and receive payment of additional fees and charges payable at the time of subsequent sale or transfer, which additional fees and charges may include without limitation,

disposition fees, excess wear and tear fees, and excess mileage charges.

E. To the extent not otherwise limited in amount or prohibited by this Chapter, an extender of credit may contract for and receive payment of additional fees and charges not specifically mentioned hereunder, provided that such additional fees and charges are not considered to be additional finance charges for purposes of 12 C.F.R. 226.4.

F. The seller in a consumer credit sale shall disclose to the consumer the amount and identity of each item, fee, or charge that is included in the cash price and the amount deferred under the transaction. Such disclosure shall be made in conformity with 12 C.F.R. 226.18(c)(1). Disclosures may be made either in the contract or in a separate writing.

G. The seller, who may also be an extender of credit, shall provide written disclosure to the consumer of the amount of the fee collected as authorized by Paragraph (A)(2) of this Section along with the following statements in conspicuous type: "This fee is authorized by R.S. 6:969.18(A)(2). It is not a mandatory state fee. The seller, who may also be an extender of credit, may charge the fee for credit investigation, compliance with federal and state law, preparation of the documents necessary to perfect or satisfy a lien upon the objects sold, and any other functions incidental to the titling of the retail sale." The disclosure shall be printed on the bill of sale, buyer's order, or sales contract which is signed by the buyer and retained by the buyer and seller.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2001, No. 877, §1; Acts 2003, No. 309, §1, eff. June 13, 2003; Acts 2004, No. 153, §1; Acts 2007, No. 131, §1, eff. June 25, 2007; Acts 2008, No. 57, §1, eff. June 5, 2008, **Acts 2010, No. 65, §1, eff. June 1, 2010**, **Acts 2010, No. 366, §1 and §2, eff. January 1, 2011.**

PART III. PREPAYMENT OF MOTOR VEHICLE CREDIT TRANSACTIONS

§969.19. Right to prepay

Notwithstanding any contrary provision of the consumer's contract, the consumer may prepay in full the unpaid balance at any time. An extender of credit may within its discretion accept the amount tendered by the consumer to be a prepayment in full of a simple interest transaction if the amount tendered is within one dollar, or to the extent provided by federal law, more or less, of the amount actually owed. Under such circumstances, the extender of credit may retain any excess amount tendered by the consumer provided that the amount tendered does not exceed the amount actually owed by more than one dollar, or to the extent provided by federal law.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.20. Rebates upon prepayment; prepayment charges; return of lien documents upon payment in full of the balance due

A. Upon prepayment in full of a precomputed transaction, the extender of credit shall refund unearned precomputed loan finance charges or credit service charges, and such refund shall represent at least ninety percent as great a portion of the loan finance charge or credit service charge, after first deducting from such precomputed charge a prepayment charge of not more than twenty-five dollars, as the sum of the monthly time balances beginning one month after the month in which prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract. This method of rebate upon prepayment is commonly referred to as the "Rule of 78's" or the "Sum of Digits" rebate method. If more than one-half of the term of the precomputed transaction has elapsed, the rebate shall be computed without deducting a prepayment charge. For the purposes of rebate upon prepayment, deferral charges are not required to be rebated. No rebate less than one dollar, or to the extent provided for by federal law, is required.

B. An extender of credit may charge the consumer a twenty-five dollar prepayment charge upon prepayment in full of a simple interest transaction. The extender of credit must include a contractual covenant in the consumer's contract under which the consumer agrees to pay such a prepayment charge.

C. (1) There is no requirement that prepaid finance charges be rebated upon prepayment in full of a simple interest transaction, provided that all of the following conditions are satisfied:

(a) The original amount financed or amount deferred was five thousand dollars or more.

(b) The original scheduled term of the transaction was twenty-four months or longer.

(c) Other than in connection with a credit transaction involving a manufactured home, prepaid finance charges assessed under the transaction did not exceed five percent of the original amount financed or amount deferred.

(2) Where any one or more of the conditions in Paragraph (1) of this Subsection are not satisfied, prepaid finance charges shall be subject to rebate upon prepayment in full of a simple interest transaction under the same method as provided in Subsection A of this Section.

D. (1) If the lender or holder of the retail installment contract receives from the consumer or the consumer's designee payment in full in an amount in accordance with the outstanding balance information, then the lender or holder of the retail installment contract shall accept the amount as payment in full, release the lender's or the retail installment contract holder's lien against the motor vehicle, and return the title or a lien satisfaction certification no later than the fourteenth day after the date upon which payment in full is received at the location designated by the lender or holder of the retail installment loan for such payments. If the lender or holder of the retail installment loan fails to return the title to the consumer or the consumer's designee within the specified time period, then the lender or holder of the retail installment contract shall provide sufficient funds to the consumer or the consumer's designee in order to obtain a duplicate title no later than fourteen days after payment in full is received at the location designated by the lender or holder of the retail installment contract for such payments.

(2) For the purposes of this Subsection, a payment in cash or certified funds shall be deemed to be received on the date that the lender or holder of the retail installment contract receives payment. All other forms of payment shall be deemed to be received on the date that the lender or the holder of the retail installment loan receives notice that the financial institution upon which payment is drawn has honored the payment.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2008, No. 236, §1.

§969.21. Rebate after acceleration of maturity

A. If the maturity of a precomputed transaction is accelerated for any reason and suit is filed, the obligation shall be credited with the same rebate required under R.S. 6:969.20(A) as if prepayment in full had been made as of the date the maturity of the obligation is accelerated at the creditor's election, except that any consumer credit insurance, property insurance, and other insurance coverages in force at such time shall not be rebated until payment is made in full. Thereafter, the obligation sued upon shall be deemed to bear a loan finance charge or credit service charge on the amount due at the annualized rate previously agreed to by the consumer until the transaction is paid in full.

B. If the maturity of a simple interest transaction is accelerated for any reason, the extender of credit may charge the consumer a twenty-five dollar prepayment charge as provided under R.S. 6:969.20(B).

Acts 1999, No. 794, §1, eff. July 2, 1999.

PART IV. LIMITATIONS ON AGREEMENTS AND PRACTICES

§969.22. Attorney fees

A motor vehicle credit contract may provide for the payment of collection and enforcement attorney fees by the consumer in an amount not to exceed twenty-five percent of the total amount payable under the transaction.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.23. Collection and enforcement costs and expenses

The consumer shall be obligated and responsible to reimburse the extender of credit for its out-of-pocket collection costs and expenses incurred in collecting the consumer's obligation and in enforcing the creditor's security rights against the secured motor vehicle and any other collateral. The consumer shall be further obligated and responsible to reimburse the extender of credit for such additional collection costs and expenses as may be authorized under Chapters 3 and 9 of the Louisiana Commercial Laws, R.S. 10:3-101 et seq., and R.S. 10:9-101 et seq.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.24. Use of multiple agreements

An extender of credit shall not divide a consumer loan into multiple agreements for the purpose of obtaining a higher loan finance charge than would otherwise be permitted.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.24.1 Acts to lessen or eliminate competition prohibited

A. Any person or any affiliates thereof, subject to the provisions of this Chapter, shall be prohibited from making statements, threats, promises, acts, contracts, or offers of contracts that the intended or actual effect of which is to coerce or attempt to coerce any seller to sell or offer to sell any extended service contract, extended maintenance plan, or GAP product offered, sold, backed, or sponsored by a particular entity, including but not limited to any manufacturer or distributor of motor vehicles or affiliates thereof, as defined in R.S. 32:1252, by setting limits for the amount financed in regard to the financing of premium or other charges for any insurance coverage, product, or service financed on the retail installment contract, when the discrimination in the amount financed limits is based, in whole or in part, upon whether or not the product, insurance, or service is provided by the person or affiliates thereof, subject to the provisions of this Chapter, or to the extent any such statements, threats, promises, acts, contracts, or offers of contracts shall lessen or eliminate competition to sell the aforementioned products.

B. Nothing contained in this Section shall prohibit a person or any affiliates thereof, subject to the provisions of this Chapter, from offering or providing incentive benefits or bonus programs to a seller or prospective seller who makes the voluntary decision to sell or offer to sell any extended service contract, extended maintenance plan, or GAP product offered, sold, backed, or sponsored by a particular entity, including but not limited to any manufacturer or distributor of motor vehicles or affiliates thereof, as defined in R.S. 32:1252, or to sell, assign, or transfer any retail installment sale or lease by him of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company.

Acts 2010, No. 258, §1, eff. August 15, 2010.

§969.24.2 Mandatory sales prohibited

It shall be a violation of this Chapter for any person subject to the provisions of this Chapter to require a seller to sell any insurance coverage, product, or service, which is provided, administered, or sold by a person or any affiliates thereof, subject to the provisions of this Chapter, in order to secure preferential financing or preferential limits on the amounts financed rates for the dealership or its customers.

Acts 2010, No. 258, §1, eff. August 15, 2010.

PART V. INSURANCE

§969.25. Consumer credit insurance

A. An extender of credit may request or require a consumer to provide consumer credit insurance as additional security under the transaction. The extender of credit may also offer consumer credit insurance to the consumer for purchase on an optional basis. If the extender of credit offers consumer credit insurance for purchase on an optional basis, the creditor shall disclose to the consumer at the time of contracting his option to purchase such insurance coverage, and shall make such disclosures as are required by Regulation Z, 12 C.F.R. 226.1 et seq. The cost of consumer credit insurance, if required by the extender of credit, is deemed to be a portion of the credit service charge or loan finance charge for the purpose of computing maximum rates.

B. Consumer credit insurance may be written with respect to each individual who is an obligor or co-obligor under a motor vehicle credit transaction. The amount of credit life insurance coverage on any one obligor or co-obligor with respect to any one motor vehicle credit transaction may not exceed the total sum payable under such contract including all loan finance charges and credit service charges. Additionally, the amount of credit health and accident insurance coverage on any one obligor or co-obligor with respect to any one motor vehicle credit transaction may not exceed the total sum payable under such contract including all loan finance charges and credit service charges.

C. (1) The premium rate for declining balance credit life insurance shall not exceed eighty cents per one hundred dollars per annum.

(2) The premium rate for level term credit life insurance shall not exceed one dollar and sixty cents per one hundred dollars per annum.

(3) The premium rate for joint credit life insurance shall not exceed one dollar and twenty cents per one hundred dollars per annum.

(4) The premium rate for joint level term credit life insurance shall not exceed two dollars and forty cents per one hundred dollars per annum.

D. The premium rate for credit dismemberment insurance shall not exceed twenty-five cents per one hundred dollars per annum.

E. (1) No policy of credit health and accident insurance may be issued pursuant to a motor vehicle credit transaction other than seven-day, fourteen-day, or thirty-day retroactive health and accident insurance.

(2) The premium rates for retroactive credit accident and health insurance issued pursuant to a motor vehicle credit transaction shall not exceed the rates set forth in the following schedule:

Months	Amount per $100.00 7-Day Retro	14-Day Retro	30-Day Retro
0 - 6	$1.75	$1.10	$ .85
more than 6 through 12	3.50	2.20	1.70
more than 12 through 24	4.30	3.00	2.50
more than 24 through 36	5.10	3.80	3.30
more than 36 through 48	5.60	4.60	4.10
more than 48 through 60	6.00	5.40	4.90
more than 60 through 72	6.80	6.20	5.70
more than 72 through 84	7.60	7.00	6.50
more than 84 through 96	8.40	7.80	7.30
more than 96 through 108	9.20	8.60	8.10
more than 108 through 120	10.00	9.40	8.90

F. Notwithstanding any other provision of law to the contrary, an extender of credit may offer any insurance authorized by the Louisiana Insurance Code in connection with any extension of credit subject to this Chapter.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.26. Property insurance

A. An extender of credit may, in addition, request or require a consumer to insure the secured motor vehicle and its use and operation, and any additional collateral securing the transaction, and include the cost of the insurance as a separate charge in the consumer's contract. This insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term, and conditions of credit, and to the existing hazards or risk of loss, damage, or destruction. This insurance and the premiums or charges thereon shall also bear a reasonable relationship to the value of the motor vehicle and other collateral insured or to be insured, when, in the event of loss, such insurance policy does not pay off the entire balance of the transaction.

B. When a consumer fails to maintain required property insurance or fails to provide the extender of credit with timely notice of the purchase or renewal of such insurance coverage, the extender of credit may, after notice to the consumer and expiration of a fifteen-day curative period from the mailing of said notice, purchase insurance on the customer's property, including insurance protecting only the creditor's interest in such property. Such insurance premiums may be added to the outstanding balance of the customer's contract and made subject to additional loan finance charges or credit service charges at the rate previously agreed to by the consumer.

C. Every seller or lender who obtains or provides insurance to a consumer to ensure a motor vehicle subject to a motor vehicle credit transaction shall inform the consumer in writing, at the time the seller or lender agrees to obtain or provide insurance, as to whether or not such insurance, by itself, satisfies the requirements of R.S. 32:851 et seq. When the insurance, by itself, does not satisfy the requirements of R.S. 32:851 et seq., the seller or lender shall advise the consumer that all motorists are required by law to be covered by an automobile liability policy with a legally prescribed liability limit which exceeds the liability limits of the policy provided, and further that failure to meet those limits will subject the consumer to penalties which may include the suspension

or revocation of driving privileges.

D. (1) The seller shall and the lender may, in addition, offer the consumer the option of voluntarily purchasing gap coverage protecting the consumer from possible liability as a result of the consumer's property insurance being insufficient to fully pay and satisfy the then unpaid balance under the consumer's contract as a result of a total loss of vehicle. The cost of gap coverage may be financed under the transaction and made subject to loan finance charges or credit service charges, as applicable.

(2) Notwithstanding any other provision of law to the contrary, for purposes of this Subsection, a federally insured depository institution at all times, including during a repossession, shall be considered a lender.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2001, No. 1211, §1; Acts 2001, No. 1213, §1; Acts 2003, No. 415, §1.

§969.27. Existing insurance

When consumer credit insurance is required in connection with a motor vehicle credit transaction, the extender of credit shall furnish the consumer a statement which shall clearly and conspicuously state that consumer credit insurance is required and that the consumer shall have the option of furnishing the required insurance either through existing policies of insurance coverages or through any insurance company authorized to transact business in Louisiana.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.28. Limitations on insurance rates; contract requirements

Any insurance provided, sold, or obtained through an extender of credit shall be written at lawful rates and in accordance with the provisions of the Louisiana Insurance Code by a company authorized to do business in this state which is not under a court-ordered rehabilitation, conservation, liquidation, or dissolution; however, such insurance may be written in accordance with R.S. 22:432 through 444 if the provisions thereof are applicable. Any extender of credit that writes insurance in compliance with the preceding requirements shall not be liable to any insured as a result of the insurer's inability to pay any claim to an insured due to insolvency, or pursuant to any court-ordered rehabilitation, conservation, liquidation, or dissolution. The contract or agreement must briefly indicate the kind, coverage, term, and amount of premium of such insurance.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2008, No. 415, §2, eff. Jan. 1, 2009.

§969.29. Choice of insurer

The consumer shall have the privilege at the time of execution of the contract of purchasing any required or requested insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the extender of credit but, in such cases, the inclusion of the insurance premium in the contract shall be optional with the extender of credit. However, any

licensed admitted property and casualty insurer possessing a valid certificate of authority to transact property and liability insurance coverage in the state of Louisiana shall be deemed to be an acceptable insurer for the provisions of this Chapter. The extender of credit may refuse any otherwise acceptable insurer which is under court-ordered rehabilitation, conservation, liquidation, or dissolution.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.30. Conditions applying to insurance provided by the extender of credit

If an extender of credit agrees with a consumer to obtain or provide insurance, the insurance shall either be evidenced by an individual policy or certificate of insurance delivered to the consumer, or sent to him at his address as stated by him, within forty-five days after the term of the insurance commences or the extender of credit shall promptly notify the consumer of any failure or delay in providing or obtaining the insurance, individual policy, or certificate of insurance.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.31. Cancellation of insurance; refund or credit upon cancellation

A. When a motor vehicle credit transaction is paid in full for any reason, the insurance paid by the consumer and provided, sold, or obtained through the seller or extender of credit in connection therewith shall be canceled; however, this provision shall not apply to insurance which is the subject of a specific written request by the consumer requesting that such insurance remain in force beyond the provision of this Section.

B. When insurance paid by the consumer is terminated for any reason, the refund for unearned insurance premiums received by the extender of credit shall, at the creditor's option, be applied toward payment of the premium for insurance to replace the coverage canceled, adjusted, or terminated, or toward payment of the unpaid balance of the motor vehicle credit transaction. The order of applying said unearned premium shall be inverse to the order in which the installments of the motor vehicle credit transaction are payable according to its terms, beginning with the installment due on the final due dates and not to the next ensuing installment which shall remain payable as originally scheduled. The remaining balance of unearned insurance premiums, if any, shall be refunded to the consumer; however, no cash refund shall be required if the amount thereof is less than one dollar or to the extent provided for by federal law.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.32. Gain from insurance

Any gain or advantage to the seller or extender of credit, or any employee, officer, director, agent, general agent, affiliate, or associate, from such insurance or its provisions or sale shall not be considered as a further charge nor a further credit service charge or loan finance charge in violation of this Chapter.

Acts 1999, No. 794, §1, eff. July 2, 1999.

PART VI. VIOLATIONS

§969.33. Effect of violations on rights of parties

A. (1) (a) If the court finds that the extender of credit has intentionally or as a result of error not in good faith violated the provisions of Part II of this Chapter regulating loan finance charges, credit service charges, and other fees and charges, the affected consumer is entitled to a refund of all loan finance charges or credit service charges and has the right to recover three times the amount of such loan finance charge or credit service charge together with reasonable attorney fees.

(b) The right to recover the civil penalty under this Subsection accrues only after all of the following have occurred:

(i) The affected consumer or his representative delivers written notice to the extender of credit by certified mail addressed to the extender of credit's place of business in which the motor vehicle credit transaction arose.

(ii) A copy of such notice is mailed to the extender of credit's agent for service of process.

(iii) Thirty days have elapsed since receipt of such notice by the extender of credit and the violation has not been corrected.

(c) Except as otherwise provided herein, if the notices provided for in Subparagraph A(1)(b) of this Section have been given by the consumer, the extender of credit shall be presumed to have committed an intentional violation or a violation not resulting from good faith error if the extension of credit fails to return or give credit for an overcharge in the loan finance charge or credit service charge or, fails to return a deficiency in the rebate within the time period set forth in Item A(1)(b)(iii) of this Section, provided that such overcharge or deficiency exceeds the greater of either ten percent of such loan finance charge, credit service charge, or rebate or fifteen dollars.

(d) If the extender of credit fails to return or give credit for an overcharge or deficiency as provided in Subparagraph A(1)(c) of this Section, in addition to the penalties in Subparagraph A(1)(a) of this Section, the consumer executing the motor vehicle credit transaction and giving the required notices shall be entitled to collect from the extender of credit up to one hundred dollars of his actual documented out-of-pocket expenses incurred as a direct result of such failure to act. (e) In the case of multiple violations involving an overcharge in the loan finance charge, credit service charge, or rebate of the size described in Subparagraph A(1)(c) of this Section, the extender of credit must notify the commission of the existence of such multiple violation and must give the commission a reasonable description of such multiple violation within thirty days after the receipt of the written notice from the complaining consumer, and the extender of credit must correct such multiple violation as to each consumer affected thereby within thirty days of the receipt of the written notice from the complaining consumer. Upon good cause shown, the commission may grant up to two thirty-day extensions within which the extender of credit must correct the violation. If the extender of credit fails to give the commission the required notice or fails to correct such multiple violation as required herein, then from such failure it shall be presumed that

such multiple violation was intentional or not in good faith.

(2) (a) If a violation of Part II of this Chapter is not intentional or is made in good faith on the part of the extender of credit, or if the consumer violates any other provision of this Chapter, the court may require the extender of credit to correct the violation, but the consumer is not entitled to the civil remedies granted by this Section.

(b) If a complaining consumer gives the extender of credit the written notice required by Items A(1)(b)(i) and (ii) of this Section of an alleged violation of the provisions of this Chapter, although such violation was unintentional or resulted from good faith error or did not in fact exist, the extender of credit must give the complaining consumer a reasonable response to the complaint in writing within thirty days of the receipt of written notice from the individual complaining consumer. If the extender of credit fails to give such response timely, the complaining consumer shall be entitled to collect from the extender of credit up to one hundred dollars of his actual documented out-of-pocket expenses incurred as a direct result of the failure of the extender of credit to comply with the provisions hereof.

B. An extender of credit has no liability for the civil remedies granted by this Section, including without limitation any liability for payment of fees to the consumer's attorney, whether under this Chapter or under any other law of the state, in all instances and, whether intentional or resulting from good faith error or not, if within sixty days after discovering a violation, or within thirty days following receipt of notice from the consumer, the extender of credit corrects the violation. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the contract containing the violation is sufficient correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

C. (1) Except as otherwise provided herein, any written notice required in this Section may be mailed by registered, certified, first class, or air mail at the sender's option. Proof of receipt by the extender of credit may consist of a return receipt executed by an employee of the extender of credit. Proof of receipt by the consumer may be a return receipt executed by the consumer. Proof of mailing any written notice may be a postmarked registered mail receipt, a postmarked certified mail receipt, or a post office certificate of mailing. Each written notice required by Subparagraph A(1)(b) of this Section shall identify the individual contract at issue, the name of the extender of credit, and the name of the individual consumer, and shall include the date and a reasonable description of the alleged violation.

(2) In any case where the extender of credit must respond in writing to a complaining consumer, the written notice or other required written response shall be mailed to the last address contained in the extender of credit's file on that consumer, unless the consumer specifies a different address in his written notice sent to the extender of credit.

D. Any civil action under this Section must be brought within one year of the date of the violation. Motor vehicle credit contracts may include compulsory arbitration clauses.

E. As used in this Section, the following terms shall have these meanings:

(1) "Civil remedies" means civil penalties, attorney fees, and out-of-pocket expenses.

(2) "Good faith error" means errors of law as well as errors of fact.

(3) "Multiple violation" means a violation which has recurred more than one hundred times as a result of a common error.

F. Attorney fees shall be measured by the time reasonably expended by the consumer's attorney and not by the amount of recovery.

G. The remedies provided in this Section shall be exclusive and shall apply prospectively to all motor vehicle credit transactions consummated on and after July 1, 1999.

Acts 1999, No. 794, §1, eff. July 2, 1999.

§969.34. Guidance by commission; advisory opinions

Any action taken by an extender of credit pursuant to any rulings or interpretive opinions made by the commission or made by its officers or attorneys shall not be deemed to be a violation of this Chapter. Advisory opinions and interpretations of the commission or its employees and attorneys shall not be considered rules requiring compliance with the rulemaking process under the Administrative Procedure Act. The commission or its employees and attorneys shall have no liability to any person with respect to the issuance of a ruling or interpretive opinion made under this Section.

Acts 1999, No. 794, §1, eff. July 2, 1999.

PART VII. LICENSING PROVISIONS

§969.35. Authority to make consumer loans; assignees; authority to issue debt waiver or debt forgiveness agreements

A. (1) Unless a person has first obtained a license from the commission or is exempt from licensing under R.S. 6:969.36, he shall not engage in the business of making consumer loans or the origination of consumer credit sales subject to this Chapter.

(2) Unless a person has first obtained a license from the commission, or is a supervised financial organization, he shall not engage in business as an administrator or as a salesman or agent involving **debt waiver or debt forgiveness agreements.**

B. An assignee may not take assignments of and undertake direct collection of payments from or enforce rights against consumers under a consumer loan or consumer credit sale subject to this Chapter without first having obtained a license from the commission. An assignee may, however, collect and enforce consumer obligations of which it has taken assignment for three months without a license if the assignee notifies the commission in writing, the assignee promptly applies for a license, and the application is not rejected.

C. There is no requirement that a licensee have one or more offices in this state.

D. Any person violating this Section may be fined one thousand dollars for each contract originated or purchased or for each debt waiver or debt forgiveness agreement issued or

guaranteed without that person being properly licensed. The fine shall be payable to the commission.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2005, No. 255, §1, **Acts 2010, No 374, §1, eff. August 15, 2010.**

§969.36. License not required

A. All of the following shall be exempt from the licensing requirements of this Chapter:

(1) Supervised financial organizations.

(2) Trusts and trustees, including without limitation securitization trusts and trustees.

(3) Assignees with no offices in this state holding motor vehicle contracts on an interim basis for a period of ninety days or less.

(4) Governmental agencies, instrumentalities, or public entities organized by Act of Congress or the Legislature of Louisiana.

(5) Qualified pension plans when entering into an extension of credit to a plan participant.

(6) Bona fide pledgees of motor vehicle credit contracts.

(7) Persons holding motor vehicle contracts for servicing or collection on behalf of the actual owner of such obligations.

(8) Licensed motor vehicle dealers to the extent that they regularly sell, assign, and transfer contracts originated by them to third party assignees within sixty days following origination. A licensed motor vehicle dealer may retain at any one time, and from time to time thereafter, a maximum of twelve contracts for its own account without being subject to the licensing requirements of this Chapter.

B. The commission is authorized to waive the licensing and examination requirements for a subsidiary of an entity as described in Paragraph A(1) of this Section.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2007, No. 131, §1, eff. June 25, 2007.

§969.37. Licensing procedures

A. (1) The application for a license under this Chapter shall be in writing, under oath, and in the form prescribed by the commission. The application shall contain:

(a) the name of the applicant;

(b) date of incorporation or organization;

(c) the address of all offices from which consumer loans are originated;

(d) the name and resident address of the owners, members, or partners or, if a corporation or association, of the directors and principal officers; and

(e) such other pertinent information as the commission may require to make an evaluation of the applicant.

(2) As part of the pertinent information considered, the commission shall consider information relative to all of the following:

(a) Financial standing and business integrity of the applicant.

(b) Ability of the applicant to conduct properly the business for which a license is sought.

(c) Adequacy of the applicant's established place of business for the purpose for which a license is sought.

(d) Effect on the motor vehicle finance business and the consuming public in the community or territory and state of Louisiana.

B. No license shall be issued unless the commission, upon investigation, finds that the applicant, and the partners or members thereof if the applicant is a partnership or limited liability company, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant a reasonable belief that the business will be operated honestly and fairly within the purposes of this Chapter.

C. (1) The applicant shall be entitled to a hearing on the question of his qualifications for a license if the applicant requests such in writing to the commission and either of the following have occurred:

(a) The applicant has received notification from the commission that his application has been denied; or

(b) The commission has not issued the applicant a license and it has been sixty days since the date that the application for the license was filed with the commission.

(2) A request for a hearing based on the denial of an application must be received by the commission, in writing, within fifteen days of the date that the commission mailed the denial notice to the applicant.

(3) The denial notice from the commission to the applicant shall be in writing and shall state, in substance, the commission's findings supporting the denial of the application. Such notice shall be sent by certified mail, return receipt requested, to the primary business address on the application.

D. (1) The license fee for every licensed lender subject to this Chapter for each calendar year or part thereof shall be the sum of four hundred dollars for the principal place of business of

the licensee and the sum of four hundred dollars for each branch of the licensee maintained in this state. If a lender makes direct consumer loans to consumers at a seller location, that location is not deemed to be a branch office of the lender.

(2) The license fee for every administrator for each calendar year or part thereof shall be fixed by the commission and shall not exceed fifteen hundred dollars.

(3) The license fee for every salesman or agent for each calendar year or part thereof shall be fixed by the commission and shall not exceed seventy-five dollars.

E. License fees shall be in addition to other fees and taxes paid by the licensee. All license fees collected under the provisions of this Chapter shall be paid to the commission and shall be used for administration of this Chapter by the commission. The commission is authorized to employ personnel necessary for administration under this Chapter.

F. Each license shall specify the location of the licensee's office or branch and, if that office or branch is located within this state, the license must be conspicuously displayed there. In case such location is changed, the commission shall endorse the change of location on the license without charge.

G. Upon approval of such application and the payment of such fee, the commission shall issue a license to the applicant to engage in the origination of consumer loans or the purchase of motor vehicle credit contracts, notes, and agreements by assignment, or issue a license to sell or administer debt waiver and debt forgiveness agreements under and in accordance with the provisions of this Chapter for a period which shall expire the last day of December following the date of issuance. Such license shall not be transferable or assignable. No licensee shall transact any business provided for by this Chapter under any other name.

H. All foreign corporations, limited partnerships, and limited liability companies seeking to maintain a license under the provisions of this Chapter shall be registered to do business in this state with the secretary of state. Evidence showing such registration shall be furnished by applicant or licensee upon request by the commission.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2003, No. 340, §1; Acts 2004, No. 910, §1; Acts 2005, No. 255, §1; Acts 2006, No. 785, §1.

§969.38. Denial, suspension, or revocation of licenses

A. Renewal of a license originally granted under this Chapter may be denied or a license may be suspended or revoked by the commission for any of the following grounds:

(1) Material misstatements in the application for a license.

(2) Failure to comply with any provision of this Chapter.

(3) Defrauding any borrower to the borrower's damage.

(4) Fraudulent misrepresentation, circumvention, or concealment by the licensee through

whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the borrower under this Chapter.

B. If the licensee is a partnership, limited liability company, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any partner, member, officer, director, or employee of the licensee has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any and all of its employees while acting as its agent.

C. (1) No license shall be denied, suspended, or revoked except after hearing thereon. The commission shall give the licensee at least thirty days written notice, in the form of an order to show cause, of the time and place of such hearing by certified mail addressed to the principal place of business in the state of such licensee. The said notice shall contain the grounds of complaint against the licensee.

(2) Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the commission and shall not be effective until after thirty days written notice thereof given after such entry forwarded by certified mail to the licensee at such principal place of business.

(3) No revocation, suspension, or surrender of any license shall impair or affect the obligation under any motor vehicle credit contract or agreement entered into or acquired previously thereto by the licensee.

D. Within thirty days after such denial, suspension, or revocation of a license, the licensee may apply for a review thereof by application to the district court for the parish of Jefferson in accordance with the Administrative Procedure Act.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2006, No. 785, §1.

§969.39. Investigations and complaints

A. The commission, if it has reason to believe that any licensee or any other person has violated any of the provisions of this Chapter, shall have the power to make such investigations as it shall deem necessary and, to the extent necessary for this purpose, the commission may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

B. Any borrower having reason to believe that this Chapter has been violated may file with the commission a written complaint setting forth the details of such alleged violation. The commission, upon receipt of such complaint, may inspect the pertinent books, records, letters of the lender and of the borrower involved relating to such specific written complaint.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2006, No. 785, §1.

§969.40. Powers of commission

A. The commission shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this Chapter. The commission shall have the power to administer oaths and affirmations to any person whose testimony is required.

B. If any person shall refuse to obey any such subpoena, to give testimony, or to produce evidence as required thereby, any judge of the district court for the parish of Jefferson may, upon application and proof of such refusal, make an order awarding process of subpoena or subpoena duces tecum out of the district court for the witness to appear before the commission and to give testimony and to produce evidence as required thereby. Upon filing such order in the office of the clerk of the district court, the clerk shall issue process of subpoena, as directed under the seal of said court requiring the person to whom it is directed, to appear at the time and place therein designated.

C. 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 commission may apply to any judge of the district court for an attachment against such person, as for contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable, or police officer, for the arrest of such person and, upon his being brought before such judge, proceed to a hearing of the case. The judge shall have the power to enforce obedience to such subpoena, the answering of any question, and the production of any evidence that may be proper, by a fine not exceeding one hundred dollars, by imprisonment, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding to be taxed.

D. The commission is hereby vested with the powers and duties necessary and proper to enable it to fully and effectively carry out the provisions and objects of this Chapter, including without limitation the imposition of fines and penalties against persons violating this Chapter and is hereby authorized and empowered to make and enforce all reasonable rules and regulations and to adopt and prescribe all forms necessary to accomplish said purpose, and the enumeration of any power or authority herein shall not be construed to deny, impair, disparage, or limit any others necessary to the attainment thereof. A copy of all rules and regulations adopted by the commission shall be published and recorded in the manner prescribed by law and may be amended, modified, or repealed from time to time.

E. The chairman and members of the commission shall receive fifty dollars per diem for each and every day actually and necessarily spent in attending to the business of the commission with respect to administration, regulation, and enforcement of this Chapter and shall be reimbursed for actual expenses incurred in performance of the duties provided for in this Section.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2006, No. 785, §1.

§969.41. Fines imposed by the commission

A. Any person who willfully violates any provision of this Chapter shall be subject to a fine by the commission in an amount not to exceed five thousand dollars per violation.

B. The commission may render judgment for costs, or any part thereof, against any party to proceedings held or scheduled to be held before the commission as it may consider equitable. These costs shall include but shall not be limited to court reporter fees, commission attorney fees, the mileage and per diem of the commission, and other applicable reasonable costs.

C. Any person who is required to be licensed under this Chapter and who fails to timely obtain a license as herein provided may be ordered by the commission to pay a penalty of one hundred dollars in addition to the regular license fee herein provided.

Acts 1999, No. 794, §1, eff. July 2, 1999; Acts 2006, No. 785, §1.

§969.42. Venue for litigation or arbitration; choice of law

A. A provision contained in any document relating to a motor vehicle credit transaction **or debt waiver or debt forgiveness agreement** that was entered into in the state of Louisiana requiring that litigation or arbitration be conducted outside of this state is void and unenforceable.

B. Except as to a supervised financial organization, a provision contained in any document relating to a motor vehicle credit transaction **or debt waiver or debt forgiveness agreement** that was entered into in the state of Louisiana that seeks to apply any law other than Louisiana law to a dispute between the parties to such transaction is void and unenforceable.

Acts 2007, No. 131, §1, eff. June 25, 2007, **Acts 2010, No 374, §1, eff. August 15, 2010.**

PART VIII. GAP COVERAGE

§969.51. GAP coverage; requirements

A. **Debt waiver or debt forgiveness agreements may be offered, sold, or provided to consumers in this state in compliance with this Chapter.**

B. **Debt waiver or debt forgiveness agreements shall be sold for a single premium.**

C. **Notwithstanding any other provision of law to the contrary, any cost to a consumer for a debt waiver or debt forgiveness agreement entered into in compliance with The Truth in Lending Act, 15 U.S.C. 1601 et seq., and its implementing regulations, as they may be amended from time to time, shall be separately stated and shall not be considered a finance charge or interest.**

D. A seller shall insure its debt waiver or debt forgiveness agreement's obligations under a contractural liability or other insurance policy issued by an insurer. A lender, other than a seller, may insure its debt waiver or debt forgiveness agreement's obligations under a contractual liability policy or other such policy issued by an insurer. Any such insurance policy may be directly obtained by a lender, seller, or may be procured by an administrator to cover a lender's or seller's obligations; however, sellers that are lessors on motor vehicles shall not be required to insure obligations related to debt waiver or debt forgiveness agreements on such leased vehicles.

E. The debt waiver or debt forgiveness agreement remains a part of the contract upon the assignment, sale, or transfer of such contract by the seller or lender.

F. Neither the extension of credit, the term of credit, nor the term of the related motor vehicle sale or lease may be conditioned upon the purchase of a debt waiver or debt forgiveness agreement.

G. Any seller or lender that offers a debt waiver or debt forgiveness agreement shall report the sale of, and forward funds received on, all such waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

Acts 2010, No 374, §1, eff. August 15, 2010.

§969.52. Liability; contractual or insurance policies

A. Contractual liability or other insurance policies insuring debt waiver or debt forgiveness agreements shall state the obligation of the insurer to reimburse or pay to the creditor any sums the lender is legally obligated to waive under the debt waiver or debt forgiveness agreement issued by the seller or lender and purchased or held by the consumer.

B. Coverage under a contractual liability or other insurance policy insuring a debt waiver or debt forgiveness agreement shall also cover any subsequent assignee upon the assignment, sale, or transfer of the contract.

C. Coverage under a contractual liability or other insurance policy insuring a debt waiver or debt forgiveness agreement shall remain in effect unless cancelled or terminated in compliance with applicable insurance laws of this state.

D. The cancellation or termination of a contractual liability or other insurance policy shall not reduce the insurer's responsibility for debt waiver or debt forgiveness agreements issued by the seller or lender prior to the date of cancellation or termination and for which premium has been received by the insurer.

Acts 2010, No. 374, §1, eff. August 15, 2010.

§969.53. Cancellation

A. Debt waiver or debt forgiveness agreements may be cancelled. Debt waiver or debt forgiveness agreements shall provide that if a consumer cancels a waiver within the "free-look period", the consumer shall be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the consumer may receive a full or partial refund pursuant to the terms of the waiver.

B. In the event of a consumer cancellation of the debt waiver or debt forgiveness

agreement or early termination of the contract, after the agreement has been in effect beyond the "free-look period", the consumer is entitled to a refund of any unearned portion of the purchase price of the waiver on terms no less favorable to the consumer than the method of refund commonly known as the "Rule of 78s" or the "sum of digits" refund method. In order to receive a refund, the consumer, in accordance with any applicable terms of the waiver, shall provide a written request to the lender, administrator, or other party.

C. If the cancellation of a debt waiver or debt forgiveness agreement occurs as a result of a default under the contract or the repossession of the motor vehicle associated with the contract, or any other termination of the contract, any refund due may be paid directly to the lender or administrator and applied as set forth in Subsection D of this Section.

D. Any cancellation refund under the provisions of this Section may be applied by the lender as a reduction of the amount owed under the contact, unless the consumer can show that the contract has been paid in full.

E. No consumer shall be charged a cancellation fee.

Acts 2010, No. 374, §1, eff. August 15, 2010.

§969.54. Disclosures

Debt waiver or debt forgiveness agreements shall disclose, as applicable, in writing and in clear, understandable language that is easy to read, the following:

(1) The name and address of the initial lender and the consumer at the time of sale and the identity and address of any administrator if different from the lender.

(2) The purchase price and the terms of the debt waiver or debt forgiveness agreement, including without limitation, the requirements for protection, conditions, or exclusions with the debt waiver or debt forgiveness agreement.

(3) A clear statement in the debt waiver or debt forgiveness given to the consumer that by its acceptance as an amendment to the contract upon assignment, the lender agrees to waive the consumer's liability for the difference between the amount owed, excluding past due amounts, payment extensions, insurance, prior unrepaired damage for which the consumer has been paid by an insurer, or other charges, under the consumer's contract and the amount paid by the consumer's primary insurer after a vehicle is deemed a total loss from a peril covered by the consumer's primary insurance company or if there is no primary insurance on the date of loss, the actual cash value of the motor vehicle at the time of loss as determined by an established value guide.

(4) That the consumer may cancel the debt waiver or debt forgiveness agreement within a "free-look period" as specified in the waiver, and shall be entitled to a full refund of the purchase price, so long as no benefits have been provided; or in the event benefits have been provided, the consumer may receive a full or partial refund of the premium paid

pursuant to the terms of the waiver.

(5) The procedure the consumer shall follow, if any, to obtain debt waiver or debt forgiveness agreement benefits under the terms and conditions of the waiver, including a telephone number and address where the consumer may apply for waiver benefits.

(6) That in order to receive any refund due in the event of a debt waiver or debt forgiveness agreements's cancellation of the debt waiver or debt forgiveness agreements or early termination of the contract after the "free-look period" of the debt waiver or debt forgiveness waiver, the consumer, in accordance with terms of the waiver, shall provide a written request to cancel to the lender, administrator, or such other party, within ninety days of the occurrence of the event terminating the contract.

(7) Any refund of the unearned purchase price of the debt waiver or debt forgiveness agreement due, in the event of cancellation of the debt waiver or debt forgiveness agreement or early termination of the contract, shall be on terms no less favorable to the consumer than the method of refund commonly known as the "Rule of 78s" or the "sum of digits" refund method.

(8) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the debt waiver or debt forgiveness agreements.

Acts 2006, No. 280, §1., **Acts 2010, No 374, §1, eff. August 15, 2010.**