

HOUSE BILL 664

I1, I3

11r1230
CF 11r1229

By: **Delegate Howard**

Introduced and read first time: January 22, 2021

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Institutions – Consumer Credit – Sales–Based Financing Transactions**

3 FOR the purpose of requiring certain revenue, fees, and examination and investigation fees
4 and assessments relating to the licensure of a person who engages in the business of
5 making or soliciting a sales–based financing transaction to be credited to the
6 Nondepository Special Fund; altering the composition of the Fund; prohibiting a
7 person from engaging in the business of making or soliciting a sales–based financing
8 transaction unless the person is licensed by the Commissioner of Financial
9 Regulation; providing that an employee of a certain licensee is not required to obtain
10 a license to engage in an activity within the scope of the person’s employment;
11 providing that a license authorizes the licensee to engage in the business of making
12 or soliciting a sales–based financing transaction at certain locations and under
13 certain names; providing that the requirements under certain federal and State laws
14 regarding the confidentiality of information or material provided to Nationwide
15 Mortgage Licensing System and Registry (NMLS), and any privilege arising out of
16 federal or state law, shall continue to apply after the information or material has
17 been disclosed to NMLS; authorizing the sharing of certain information and material
18 with certain officials without the loss of privilege or confidentiality protections
19 provided by federal or certain State laws; prohibiting certain information or material
20 from being subject to disclosure, subpoena, discovery, or admission into evidence
21 under certain circumstances; establishing certain qualifications for obtaining a
22 license; establishing procedures for applying for a license; requiring the
23 Commissioner to conduct an investigation to determine if an applicant meets certain
24 requirements; requiring the Commissioner to issue a license to an applicant who
25 meets certain requirements; requiring the Commissioner to deny an application for
26 a license under certain circumstances; establishing procedures for the approval and
27 the denial of an application; providing for the term of a license; establishing
28 procedures for the renewal of a license; authorizing the Commissioner to determine
29 that licenses issued under this Act shall expire on a staggered basis; authorizing a
30 licensee to surrender a license under certain circumstances; prohibiting the
31 Commissioner from refunding any part of a license fee under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 providing that the surrender of a license does not affect certain liability; providing
2 that a license is not transferable; requiring each licensee to conspicuously post
3 certain information at each location where business is conducted, except under
4 certain circumstances, and to display certain information on its website, certain
5 software applications, and certain profile pages; requiring each licensee to keep
6 certain books and records; authorizing the Commissioner to investigate the business
7 of a licensee or a certain person; requiring that the Commissioner be given access to
8 certain items for certain purposes; authorizing the Commissioner to subpoena
9 certain evidence and summon and examine under oath certain persons for certain
10 purposes; authorizing the Commissioner to issue a certain cease and desist order for
11 certain violations; authorizing the Commissioner to enforce a cease and desist order
12 in a certain manner; authorizing the Commissioner to suspend or revoke a license
13 under certain circumstances; requiring the Commissioner to provide certain notice
14 and an opportunity for a hearing in accordance with the Administrative Procedure
15 Act under certain circumstances; prohibiting a licensee from advertising, printing,
16 displaying, publishing, distributing, or broadcasting false, misleading, or deceptive
17 statements regarding sales-based financing transactions; prohibiting a licensee
18 from engaging in the business of making or soliciting a sales-based financing
19 transaction under a name other than that under which the licensee is licensed except
20 under certain circumstances; providing for the method in which a licensee must
21 calculate a recipient's projected sales volume, estimated term of repayment,
22 projected payment amounts, and the estimated annual percentage rate of a
23 sales-based transaction; requiring a licensee to report certain information to the
24 Commissioner on or before a certain date each year; requiring each licensee to
25 disclose or provide certain information to a recipient at a certain time; authorizing a
26 licensee to require a recipient to pay off the balance of an existing sales-based
27 financing transaction as a condition of obtaining an additional sales-based financing
28 transaction under certain circumstances; providing for the calculation of a certain
29 prepayment charge; requiring a licensee to record a certain answer to a certain
30 question under certain circumstances; prohibiting a licensee from taking a certain
31 confession of judgment, taking certain negotiable instruments in which blanks are
32 left to be filled after execution, or entering into a sales-based financing transaction
33 with an estimated annual percentage rate that exceeds a certain percentage;
34 providing that a violation of this Act is an unfair, abusive, or deceptive trade practice
35 under the Maryland Consumer Protection Act and is subject to certain enforcement
36 and penalty provisions; establishing a certain penalty for a violation of certain
37 provisions of this Act; providing that the Commissioner has sole authority to enforce
38 compliance with certain provisions of this Act; requiring the Commissioner to adopt
39 certain regulations; authorizing the Commissioner to determine certain charges by
40 regulation; providing for the application of certain provisions of this Act; defining
41 certain terms; making the provisions of this Act severable; and generally relating to
42 sales-based financing transactions.

43 BY renumbering

44 Article – Commercial Law

45 Section 13-301(14)(xxix) through (xxxv), respectively

46 to be Section 13-301(14)(xxx) through (xxxvi), respectively

1 Annotated Code of Maryland
2 (2013 Replacement Volume and 2020 Supplement)

3 BY adding to
4 Article – Commercial Law
5 Section 13–301(14)(xxix)
6 Annotated Code of Maryland
7 (2013 Replacement Volume and 2020 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Financial Institutions
10 Section 11–610(a) through (c)
11 Annotated Code of Maryland
12 (2020 Replacement Volume and 2020 Supplement)

13 BY adding to
14 Article – Financial Institutions
15 Section 12–1101 through 12–1124 to be under the new subtitle “Subtitle 11.
16 Sales–Based Financing Transactions”
17 Annotated Code of Maryland
18 (2020 Replacement Volume and 2020 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That Section(s) 13–301(14)(xxix) through (xxxv), respectively, of Article – Commercial Law
21 of the Annotated Code of Maryland be renumbered to be Section(s) 13–301(14)(xxx) through
22 (xxxvi), respectively.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
24 as follows:

25 **Article – Commercial Law**

26 13–301.

27 Unfair, abusive, or deceptive trade practices include any:

28 (14) Violation of a provision of:

29 **(XXIX) TITLE 12, SUBTITLE 11 OF THE FINANCIAL**
30 **INSTITUTIONS ARTICLE;**

31 **Article – Financial Institutions**

32 11–610.

33 (a) There is a Nondepository Special Fund that consists of:

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- 1 (1) Revenue received for the licensing of individuals under this subtitle;
- 2 (2) Revenue received for the licensing of persons under Subtitle 2 of this
3 title;
- 4 (3) Revenue received for the licensing of persons under Subtitle 3 of this
5 title;
- 6 (4) Revenue received for the licensing of persons under Subtitle 4 of this
7 title;
- 8 (5) Revenue received for the licensing of persons under Subtitle 5 of this
9 title;
- 10 (6) Revenue received for the licensing of persons under Title 12, Subtitle 1
11 of this article;
- 12 (7) Revenue received for the licensing of persons under Title 12, Subtitle 4
13 of this article;
- 14 (8) Revenue received for the licensing of persons under Title 12, Subtitle 9
15 of this article;
- 16 (9) Revenue received for the registration of persons under Title 12, Subtitle
17 10 of this article;

18 **(10) REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER**
19 **TITLE 12, SUBTITLE 11 OF THIS ARTICLE;**

20 ~~[(10)]~~ **(11)** Revenue received for the licensing of persons under Title 7 of the
21 Business Regulation Article;

22 ~~[(11)]~~ **(12)** Revenue received for the licensing of persons under Title 14,
23 Subtitle 19 of the Commercial Law Article;

24 ~~[(12)]~~ **(13)** Income from the investments that the State Treasurer makes for
25 the Fund; and

26 ~~[(13)]~~ **(14)** (i) Any other fee, examination or investigation fee or
27 assessment, or revenue received by the Commissioner under this subtitle, Subtitles 2, 3, 4,
28 and 5 of this title, Title 12, Subtitles 1, 4, 9, ~~[and] 10,~~ **AND 11** of this article, Title 12,
29 Subtitle 14 of the Commercial Law Article, and Title 14, Subtitles 12 and 19 of the
30 Commercial Law Article; and

31 (ii) Any other fee or revenue received by the State Collection Agency
32 Licensing Board under Title 7 of the Business Regulation Article.

1 (b) Notwithstanding subsection (a) of this section:

2 (1) The Commissioner shall pay all fines and penalties collected by the
3 Commissioner under Title 2, Subtitle 1 of this article, this subtitle, Subtitles 2, 3, 4, and 5
4 of this title, Title 12, Subtitles 1, 4, 9, [and] 10, **AND 11** of this article, Title 12, Subtitle 14
5 of the Commercial Law Article, and Title 14, Subtitles 12 and 19 of the Commercial Law
6 Article into the General Fund of the State; and

7 (2) The State Collection Agency Licensing Board shall pay all fines and
8 penalties collected by the Board under Title 7 of the Business Regulation Article into the
9 General Fund of the State.

10 (c) The purpose of the Fund is to cover the direct and indirect costs of fulfilling
11 the statutory and regulatory duties of the Commissioner and the State Collection Agency
12 Licensing Board related to:

13 (1) Title 2, Subtitle 1 of this article;

14 (2) This subtitle;

15 (3) Subtitle 2 of this title;

16 (4) Subtitle 3 of this title;

17 (5) Subtitle 4 of this title;

18 (6) Subtitle 5 of this title;

19 (7) Title 12, Subtitle 1 of this article;

20 (8) Title 12, Subtitle 4 of this article;

21 (9) Title 12, Subtitle 9 of this article;

22 (10) Title 12, Subtitle 10 of this article;

23 **(11) TITLE 12, SUBTITLE 11 OF THIS ARTICLE;**

24 **[(11)] (12)** Title 7 of the Business Regulation Article;

25 **[(12)] (13)** Title 12 of the Commercial Law Article;

26 **[(13)] (14)** Title 14, Subtitles 12, 19, and 42 of the Commercial Law Article;

27 **[(14)] (15)** Title 7, Subtitles 1, 3, 4, and 5 of the Real Property Article;

1 [(15)] (16) Title 26, Subtitle 6 of the Education Article; and

2 [(16)] (17) Any other expense authorized in the State budget.

3 **SUBTITLE 11. SALES-BASED FINANCING TRANSACTIONS.**

4 **12-1101.**

5 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (B) “CONTROL PERSON” HAS THE MEANING STATED IN § 11-201 OF THIS
8 ARTICLE.

9 (C) “FINANCE CHARGE” MEANS A FINANCE CHARGE DESCRIBED IN 12
10 C.F.R. § 1026.4 REGARDLESS OF WHETHER THE:

11 (1) SALES-BASED FINANCING TRANSACTION IS CONSIDERED AN
12 EXTENSION OF CREDIT UNDER FEDERAL LAW; AND

13 (2) LICENSEE IS CONSIDERED A CREDITOR UNDER FEDERAL LAW.

14 (D) “LICENSE” MEANS A LICENSE ISSUED IN ANY FORM BY THE
15 COMMISSIONER UNDER THIS SUBTITLE TO ENGAGE IN THE BUSINESS OF MAKING OR
16 SOLICITING A SALES-BASED FINANCING TRANSACTION, INCLUDING THROUGH
17 NMLS.

18 (E) “LICENSEE” MEANS A PERSON LICENSED UNDER THIS SUBTITLE TO
19 ENGAGE IN THE BUSINESS OF MAKING OR SOLICITING A SALES-BASED FINANCING
20 TRANSACTION.

21 (F) “RECIPIENT” MEANS A PERSON THAT ENTERS INTO A
22 SALES-BASED FINANCING TRANSACTION WITH A LICENSEE.

23 (G) (1) “SALES-BASED FINANCING TRANSACTION” MEANS A FINANCING
24 TRANSACTION THAT IS REPAID OVER TIME AS A PERCENTAGE OF SALES OR REVENUE
25 WHERE THE PAYMENT AMOUNT MAY INCREASE OR DECREASE DEPENDING ON THE
26 VOLUME OF SALES MADE OR REVENUE RECEIVED BY THE RECIPIENT.

27 (2) “SALES-BASED FINANCING TRANSACTION” INCLUDES A TRUE-UP
28 MECHANISM WHERE THE FINANCING IS REPAID AS A FIXED PAYMENT BUT PROVIDES
29 FOR A RECONCILIATION PROCESS THAT ADJUSTS THE PAYMENT TO AN AMOUNT
30 THAT IS A PERCENTAGE OF SALES OR REVENUE.

1 (H) "SPECIFIC OFFER" MEANS THE TERMS OF COMMERCIAL FINANCING
2 THAT ARE QUOTED TO A RECIPIENT, BASED ON INFORMATION OBTAINED FROM OR
3 ABOUT THE RECIPIENT THAT, IF ACCEPTED BY A RECIPIENT, ARE BINDING ON THE
4 LICENSEE.

5 (I) "UNIQUE IDENTIFIER" HAS THE MEANING STATED IN § 11-201 OF THIS
6 ARTICLE.

7 12-1102.

8 THIS SUBTITLE DOES NOT APPLY:

9 (1) TO A PERSON WHO MAKES OR SOLICITS FIVE OR FEWER
10 SALES-BASED FINANCING TRANSACTIONS WITHIN A 12-MONTH PERIOD;

11 (2) TO A STATE OR FEDERAL BANK, CREDIT UNION, OR SAVINGS
12 ASSOCIATION;

13 (3) TO A SUBSIDIARY OR AFFILIATE OF AN ORGANIZATION LISTED IN
14 ITEM (2) OF THIS SECTION;

15 (4) TO AN INSURANCE COMPANY;

16 (5) TO A PERSON WHO IS ACTING IN THE CAPACITY OF A MONEY
17 LENDER IN ACCORDANCE WITH STATE LAW;

18 (6) WITH RESPECT TO A TRANSACTION THAT IS INTENDED TO BE A
19 PURCHASE OF THE OWNERSHIP, WHOLLY OR PARTLY, OF A BUSINESS OR
20 COMMERCIAL ENTERPRISE;

21 (7) TO AN INDIVIDUAL COMMERCIAL FINANCING TRANSACTION OVER
22 \$500,000; OR

23 (8) TO A FINANCING TRANSACTION IN WHICH THE RECIPIENT DOES
24 NOT INTEND TO USE THE PROCEEDS PRIMARILY FOR PERSONAL, FAMILY, OR
25 HOUSEHOLD PURPOSES.

26 12-1103.

27 (A) A PERSON MAY NOT ENGAGE IN THE BUSINESS OF MAKING OR
28 SOLICITING A SALES-BASED FINANCING TRANSACTION UNLESS THE PERSON IS
29 LICENSED UNDER THIS SUBTITLE.

1 (B) AN EMPLOYEE OF A PERSON LICENSED UNDER THIS SUBTITLE IS NOT
2 REQUIRED TO OBTAIN A LICENSE TO ENGAGE IN AN ACTIVITY WITHIN THE SCOPE OF
3 THE PERSON'S EMPLOYMENT.

4 (C) AN APPLICANT FOR AN INITIAL LICENSE OR A LICENSE RENEWAL
5 SHALL:

6 (1) APPLY FOR THE INITIAL LICENSE OR RENEWAL THROUGH NMLS;
7 AND

8 (2) PAY THE FEE ESTABLISHED BY THE COMMISSIONER.

9 (D) A LICENSE ISSUED UNDER THIS SUBTITLE AUTHORIZES THE LICENSEE
10 TO ENGAGE IN THE BUSINESS OF MAKING OR SOLICITING A SALES-BASED
11 FINANCING TRANSACTION AT THE LOCATIONS AND UNDER THE NAMES STATED ON
12 THE LICENSE IN NMLS.

13 12-1104.

14 (A) (1) THE REQUIREMENTS UNDER ANY FEDERAL LAW AND THE PUBLIC
15 INFORMATION ACT REGARDING THE PRIVACY OR CONFIDENTIALITY OF
16 INFORMATION OR MATERIAL PROVIDED TO NMLS, AND ANY PRIVILEGE ARISING
17 UNDER FEDERAL OR STATE LAW, INCLUDING THE RULES OF ANY FEDERAL OR STATE
18 COURT WITH RESPECT TO THAT INFORMATION OR MATERIAL, SHALL CONTINUE TO
19 APPLY TO THAT INFORMATION OR MATERIAL AFTER THE INFORMATION OR
20 MATERIAL HAS BEEN DISCLOSED TO NMLS.

21 (2) THE INFORMATION AND MATERIAL MAY BE SHARED WITH ALL
22 FEDERAL AND STATE REGULATORY OFFICIALS HAVING OVERSIGHT AUTHORITY
23 OVER PERSONS REQUIRED TO BE LICENSED UNDER THIS SUBTITLE, INCLUDING THE
24 FINANCIAL CRIMES ENFORCEMENT NETWORK AND THE OFFICE OF FOREIGN
25 ASSETS CONTROL, WITHOUT THE LOSS OF PRIVILEGE OR THE LOSS OF
26 CONFIDENTIALITY PROTECTIONS PROVIDED BY FEDERAL LAW OR THE PUBLIC
27 INFORMATION ACT.

28 (B) INFORMATION OR MATERIAL THAT IS SUBJECT TO A PRIVILEGE OR
29 CONFIDENTIALITY UNDER SUBSECTION (A) OF THIS SECTION MAY NOT BE SUBJECT
30 TO:

31 (1) DISCLOSURE UNDER FEDERAL OR STATE LAW GOVERNING THE
32 DISCLOSURE TO THE PUBLIC OF INFORMATION HELD BY AN OFFICER OR AGENCY OF
33 THE FEDERAL GOVERNMENT OR A STATE THAT HAS RECEIVED THE INFORMATION

1 OR MATERIAL; OR

2 (2) SUBPOENA, DISCOVERY, OR ADMISSION INTO EVIDENCE, IN ANY
3 PRIVATE CIVIL LITIGATION OR ADMINISTRATIVE PROCESS, UNLESS, WITH RESPECT
4 TO ANY PRIVILEGE HELD BY NMLS, THE PERSON TO WHOM THE INFORMATION OR
5 MATERIAL RELATES WAIVES THAT PRIVILEGE.

6 (C) ANY PROVISION OF THE PUBLIC INFORMATION ACT RELATING TO THE
7 DISCLOSURE OF ANY INFORMATION OR MATERIAL DESCRIBED IN SUBSECTION (A)
8 OF THIS SECTION THAT IS INCONSISTENT WITH SUBSECTION (A) OF THIS SECTION
9 SHALL BE SUPERSEDED BY THIS SECTION.

10 (D) THIS SECTION DOES NOT APPLY TO INFORMATION OR MATERIAL
11 RELATING TO PUBLICLY ADJUDICATED DISCIPLINARY AND ENFORCEMENT ACTIONS
12 AGAINST A PERSON REQUIRED TO BE LICENSED UNDER THIS SUBTITLE THAT IS
13 INCLUDED IN NMLS AND DESIGNATED FOR ACCESS BY THE PUBLIC.

14 12-1105.

15 (A) ALL REVENUE RECEIVED FOR THE LICENSING OF PERSONS UNDER THIS
16 SUBTITLE AND ANY OTHER FEE OR REVENUE RECEIVED BY THE COMMISSIONER
17 UNDER THIS SUBTITLE SHALL BE:

18 (1) CREDITED TO THE NONDEPOSITORY SPECIAL FUND
19 ESTABLISHED UNDER § 11-610 OF THIS ARTICLE; AND

20 (2) USED IN ACCORDANCE WITH § 11-610(C) OF THIS ARTICLE.

21 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE
22 COMMISSIONER SHALL PAY ALL FINES AND PENALTIES COLLECTED BY THE
23 COMMISSIONER UNDER THIS SUBTITLE AND TITLE 11, SUBTITLE 3 OF THIS ARTICLE
24 INTO THE GENERAL FUND OF THE STATE.

25 12-1106.

26 TO QUALIFY FOR A LICENSE, AN APPLICANT MUST:

27 (1) HAVE AT LEAST \$20,000 IN LIQUID ASSETS AVAILABLE TO BE
28 USED IN THE BUSINESS TO BE COVERED BY THE LICENSE; AND

29 (2) HAVE SUFFICIENT EXPERIENCE, CHARACTER, FINANCIAL
30 RESPONSIBILITY, AND GENERAL FITNESS TO:

1 (I) COMMAND THE CONFIDENCE OF THE PUBLIC; AND

2 (II) WARRANT THE BELIEF THAT THE BUSINESS WILL BE
3 OPERATED LAWFULLY, HONESTLY, FAIRLY, AND EFFICIENTLY.

4 12-1107.

5 (A) (1) TO APPLY FOR A LICENSE, AN APPLICANT SHALL:

6 (I) COMPLETE, SIGN, AND SUBMIT TO THE COMMISSIONER AN
7 APPLICATION MADE UNDER OATH IN THE FORM, AND IN ACCORDANCE WITH THE
8 PROCESS, THAT THE COMMISSIONER REQUIRES; AND

9 (II) PROVIDE ALL THE INFORMATION THAT THE
10 COMMISSIONER REQUESTS.

11 (2) THE APPLICATION SHALL INCLUDE:

12 (I) THE APPLICANT'S NAME, PRINCIPAL EXECUTIVE OFFICE
13 ADDRESS, AND, IF THE APPLICANT IS NOT AN INDIVIDUAL, THE NAME AND
14 RESIDENCE ADDRESS OF EACH CONTROL PERSON;

15 (II) THE ADDRESS OF EACH ADDITIONAL LOCATION, IF ANY,
16 WHERE THE APPLICANT ENGAGES IN THE BUSINESS OF MAKING OR SOLICITING A
17 SALES-BASED FINANCING TRANSACTION; AND

18 (III) ANY OTHER INFORMATION THAT THE COMMISSIONER
19 REQUIRES FOR AN INVESTIGATION AND FINDINGS UNDER § 12-1108 OF THIS
20 SUBTITLE.

21 (B) (1) WITH THE APPLICATION, THE APPLICANT SHALL PAY TO THE
22 COMMISSIONER:

23 (I) AN INVESTIGATION FEE OF \$100; AND

24 (II) A LICENSE FEE OF \$850.

25 (2) IN ADDITION TO THE INVESTIGATION FEE AND THE LICENSE FEE
26 REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, AN APPLICANT FOR THE
27 ISSUANCE OF A LICENSE OR RENEWAL OF A LICENSE SHALL PAY TO NMLS ANY FEES
28 THAT NMLS IMPOSES IN CONNECTION WITH THE ISSUANCE OR RENEWAL OF THE
29 LICENSE.

1 **(C) (1) WITH THE APPLICATION, THE APPLICANT SHALL FILE A SURETY**
2 **BOND.**

3 **(2) THE BOND SHALL RUN TO THE COMMISSIONER, AS OBLIGEE, FOR**
4 **THE BENEFIT OF:**

5 **(I) THE STATE; AND**

6 **(II) A PERSON WHO HAS A CAUSE OF ACTION AGAINST THE**
7 **APPLICANT.**

8 **(3) THE BOND SHALL BE:**

9 **(I) IN AN AMOUNT OF \$250,000;**

10 **(II) ISSUED BY A SURETY COMPANY THAT:**

11 1. **IS AUTHORIZED TO DO BUSINESS IN THE STATE; AND**

12 2. **HOLDS A CERTIFICATE OF AUTHORITY ISSUED BY THE**
13 **MARYLAND INSURANCE COMMISSIONER; AND**

14 **(III) CONDITIONED THAT THE LICENSEE SHALL:**

15 1. **COMPLY WITH THIS SUBTITLE; AND**

16 2. **PAY TO THE STATE OR TO ANY PERSON ANY MONEY**
17 **THAT THE LICENSEE MAY OWE TO THE STATE OR TO THE PERSON UNDER THIS**
18 **SUBTITLE.**

19 **(4) THE LIABILITY OF THE SURETY:**

20 **(I) SHALL BE CONTINUOUS;**

21 **(II) MAY NOT BE AGGREGATED OR CUMULATIVE, WHETHER OR**
22 **NOT THE BOND IS RENEWED, CONTINUED, REPLACED, OR MODIFIED;**

23 **(III) MAY NOT BE DETERMINED BY ADDING TOGETHER THE**
24 **PENAL SUM OF THE BOND, OR ANY PART OF THE PENAL SUM OF THE BOND, IN**
25 **EXISTENCE AT ANY TWO OR MORE POINTS IN TIME;**

26 **(IV) SHALL BE CONSIDERED TO BE ONE CONTINUOUS**
27 **OBLIGATION, REGARDLESS OF INCREASES OR DECREASES IN THE PENAL SUM OF**

1 THE BOND;

2 (v) MAY NOT BE AFFECTED BY:

3 1. THE INSOLVENCY OR BANKRUPTCY OF THE
4 LICENSEE;

5 2. ANY MISREPRESENTATION, BREACH OF WARRANTY,
6 FAILURE TO PAY A PREMIUM, OR OTHER ACT OR OMISSION OF THE LICENSEE OR AN
7 AGENT OF THE LICENSEE; OR

8 3. THE SUSPENSION OF THE LICENSEE'S LICENSE;

9 (vi) MAY NOT REQUIRE AN ADMINISTRATIVE ENFORCEMENT
10 ACTION BY THE COMMISSIONER AS A PREREQUISITE TO LIABILITY; AND

11 (vii) SHALL CONTINUE FOR AT LEAST 3 YEARS AFTER THE LATER
12 OF:

13 1. THE DATE THE BOND IS CANCELED; OR

14 2. THE DATE THE LICENSEE, FOR ANY REASON, CEASES
15 TO BE LICENSED.

16 (5) (i) A BOND MAY BE CANCELED BY THE SURETY OR THE
17 LICENSEE BY GIVING NOTICE OF CANCELLATION TO THE COMMISSIONER.

18 (ii) NOTICE UNDER SUBPARAGRAPH (i) OF THIS PARAGRAPH
19 SHALL BE:

20 1. IN WRITING; AND

21 2. SENT BY CERTIFIED MAIL, RETURN RECEIPT
22 REQUESTED.

23 (iii) A CANCELLATION OF A BOND UNDER THIS PARAGRAPH IS
24 NOT EFFECTIVE UNTIL 90 DAYS AFTER THE COMMISSIONER RECEIVES THE NOTICE
25 OF CANCELLATION.

26 (6) A CLAIM AGAINST THE BOND MAY BE FILED WITH THE SURETY BY:

27 (i) A CLAIMANT; OR

1 **(II) THE COMMISSIONER ON BEHALF OF A CLAIMANT OR THE**
2 **STATE.**

3 **(7) IF THE AMOUNT OF CLAIMS AGAINST A BOND EXCEEDS THE**
4 **AMOUNT OF THE BOND, THE SURETY:**

5 **(I) SHALL PAY THE AMOUNT OF THE BOND TO THE**
6 **COMMISSIONER FOR PRO RATA DISTRIBUTION TO CLAIMANTS; AND**

7 **(II) IS RELIEVED OF LIABILITY UNDER THE BOND.**

8 **(8) IF THE PENAL AMOUNT OF A BOND IS REDUCED BY PAYMENT OF A**
9 **CLAIM OR JUDGMENT, THE LICENSEE SHALL FILE A NEW OR ADDITIONAL BOND WITH**
10 **THE COMMISSIONER.**

11 **(9) A PENALTY IMPOSED AGAINST A LICENSEE UNDER THIS SUBTITLE**
12 **MAY BE COLLECTED AND PAID FROM THE PROCEEDS OF A BOND REQUIRED UNDER**
13 **THIS SUBSECTION.**

14 **(D) FOR THE PRINCIPAL EXECUTIVE OFFICE AND EACH ADDITIONAL**
15 **LOCATION LICENSE FOR WHICH AN APPLICANT APPLIES, THE APPLICANT SHALL:**

16 **(1) SUBMIT A SEPARATE APPLICATION; AND**

17 **(2) PAY A SEPARATE INVESTIGATION FEE AND LICENSE FEE.**

18 **12-1108.**

19 **(A) WHEN AN APPLICANT FOR A LICENSE FILES THE APPLICATION AND**
20 **BOND AND PAYS THE FEES REQUIRED BY THE COMMISSIONER UNDER § 12-1107 OF**
21 **THIS SUBTITLE, THE COMMISSIONER SHALL INVESTIGATE THE FACTS RELEVANT TO**
22 **THE APPLICATION TO DETERMINE WHETHER THE APPLICANT MEETS THE**
23 **REQUIREMENTS OF THIS SUBTITLE.**

24 **(B) UNLESS THE COMMISSIONER AND AN APPLICANT AGREE IN WRITING TO**
25 **EXTEND THE TIME, THE COMMISSIONER SHALL APPROVE OR DENY EACH**
26 **APPLICATION FOR A LICENSE WITHIN 60 DAYS AFTER THE DATE ON WHICH THE**
27 **COMPLETE APPLICATION IS FILED, THE FEES ARE PAID, AND THE SURETY BOND IS**
28 **FILED.**

29 **(C) THE COMMISSIONER SHALL ISSUE A LICENSE TO AN APPLICANT WHO**
30 **MEETS THE REQUIREMENTS OF THIS SUBTITLE.**

1 **(D) (1) IF AN APPLICANT DOES NOT MEET THE REQUIREMENTS OF THIS**
2 **SUBTITLE, THE COMMISSIONER SHALL:**

3 **(I) DENY THE APPLICATION;**

4 **(II) NOTIFY THE APPLICANT IMMEDIATELY OF THE DENIAL;**

5 **(III) RETURN THE BOND FILED UNDER § 12-1107 OF THIS**
6 **SUBTITLE;**

7 **(IV) REFUND THE LICENSING FEE; AND**

8 **(V) KEEP THE INVESTIGATION FEE.**

9 **(2) (I) WITHIN 10 DAYS AFTER THE COMMISSIONER DENIES AN**
10 **APPLICATION, THE COMMISSIONER SHALL SEND A WRITTEN NOTICE TO THE**
11 **APPLICANT STATING THE REASONS FOR THE DENIAL.**

12 **(II) THE NOTICE SHALL BE SENT BY UNITED STATES MAIL,**
13 **E-MAIL, OR ANY MEANS PROVIDED THROUGH NMLS TO THE ADDRESS LISTED ON**
14 **THE APPLICATION.**

15 **12-1109.**

16 **(A) AN INITIAL LICENSE TERM SHALL:**

17 **(1) BEGIN ON THE DATE THE LICENSE IS ISSUED; AND**

18 **(2) EXPIRE ON DECEMBER 31 OF THE YEAR:**

19 **(I) IN WHICH THE LICENSE IS ISSUED, IF THE LICENSE IS**
20 **ISSUED BEFORE NOVEMBER 1; OR**

21 **(II) IMMEDIATELY FOLLOWING THE YEAR IN WHICH THE**
22 **LICENSE IS ISSUED, IF THE LICENSE IS ISSUED ON OR AFTER NOVEMBER 1.**

23 **(B) ON OR AFTER NOVEMBER 1 OF THE YEAR IN WHICH A LICENSE EXPIRES,**
24 **THE LICENSE MAY BE RENEWED FOR AN ADDITIONAL 1-YEAR TERM, IF THE**
25 **LICENSEE:**

26 **(1) OTHERWISE IS ENTITLED TO BE LICENSED;**

27 **(2) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$850; AND**

1 **(3) SUBMITS TO THE COMMISSIONER A RENEWAL APPLICATION IN**
2 **THE FORM AND IN ACCORDANCE WITH THE PROCESS THAT THE COMMISSIONER**
3 **REQUIRES.**

4 **(C) TO THE EXTENT REQUIRED OR AUTHORIZED BY NMLS, THE**
5 **COMMISSIONER MAY DETERMINE THAT LICENSES ISSUED UNDER THIS SUBTITLE**
6 **SHALL EXPIRE ON A STAGGERED BASIS.**

7 **(D) IN ADDITION TO THE LICENSE RENEWAL FEE REQUIRED UNDER**
8 **SUBSECTION (B)(2) OF THIS SECTION, AN APPLICANT FOR A LICENSE RENEWAL**
9 **SHALL PAY TO THE NMLS ANY FEES THAT THE NMLS IMPOSES IN CONNECTION**
10 **WITH THE RENEWAL APPLICATION.**

11 **12-1110.**

12 **(A) A LICENSEE MAY SURRENDER A LICENSE THROUGH NMLS IN THE**
13 **FORM AND IN ACCORDANCE WITH THE PROCESS THAT THE COMMISSIONER**
14 **REQUIRES.**

15 **(B) IF A LICENSE IS SURRENDERED VOLUNTARILY, OR IS SUSPENDED OR**
16 **REVOKED, THE COMMISSIONER MAY NOT REFUND ANY PART OF THE LICENSE FEE**
17 **REGARDLESS OF THE TIME REMAINING IN THE LICENSE TERM.**

18 **(C) THE SURRENDER OF A LICENSE DOES NOT AFFECT ANY CIVIL OR**
19 **CRIMINAL LIABILITY OF THE LICENSEE FOR ACTS COMMITTED BEFORE THE LICENSE**
20 **WAS SURRENDERED.**

21 **12-1111.**

22 **(A) A LICENSE ISSUED UNDER THIS SUBTITLE IS NOT TRANSFERABLE.**

23 **(B) (1) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, EACH**
24 **LICENSEE SHALL CONSPICUOUSLY POST, IN 48 POINT OR LARGER TYPE, AT EACH**
25 **LOCATION WHERE THE BUSINESS IS CONDUCTED:**

26 **(I) THE LICENSEE'S UNIQUE IDENTIFIER; AND**

27 **(II) A STATEMENT ADVISING A CONSUMER OF THE**
28 **AVAILABILITY OF THE NMLS CONSUMER ACCESS WEBSITE TO VERIFY THE**
29 **LICENSING STATUS OF THE LICENSEE.**

30 **(2) EACH LICENSEE SHALL CONSPICUOUSLY DISPLAY THE**

1 FOLLOWING INFORMATION ON THE LICENSEE'S WEBSITE, ANY SOFTWARE
2 APPLICATION ACCESSIBLE TO THE PUBLIC AND USED TO ENGAGE IN THE BUSINESS
3 OF MAKING OR SOLICITING A SALES-BASED FINANCING TRANSACTION, AND THE
4 PROFILE PAGE WITHIN EACH SOCIAL MEDIA PLATFORM THE LICENSEE USES:

5 (I) THE LICENSEE'S UNIQUE IDENTIFIER; AND

6 (II) A LINK TO THE NMLS CONSUMER ACCESS WEBSITE.

7 (C) A LICENSEE IS NOT REQUIRED TO POST THE INFORMATION REQUIRED
8 IN SUBSECTION (B)(1) OF THIS SECTION IF THE LICENSEE DOES NOT GRANT
9 REGULAR ACCESS TO THE LICENSED LOCATION TO MEMBERS OF THE GENERAL
10 PUBLIC.

11 12-1112.

12 EACH LICENSEE SHALL KEEP:

13 (1) THE BOOKS AND RECORDS THAT THE COMMISSIONER REQUIRES
14 TO DETERMINE COMPLIANCE WITH THIS SUBTITLE; AND

15 (2) FOR AT LEAST 2 YEARS AFTER THE LICENSEE MAKES THE FINAL
16 ENTRY CONCERNING ANY SALES-BASED FINANCING TRANSACTION IN THE
17 LICENSEE'S BUSINESS, THE RECORDS OF THAT ENTRY.

18 12-1113.

19 (A) THE COMMISSIONER MAY, AT ANY TIME, INVESTIGATE THE BUSINESS
20 OF:

21 (1) A LICENSEE; OR

22 (2) A PERSON THAT ENGAGES IN THE BUSINESS OF MAKING OR
23 SOLICITING A SALES-BASED FINANCING TRANSACTION, WHETHER OR NOT THAT
24 PERSON:

25 (I) ACTS OR CLAIMS TO ACT AS A PRINCIPAL, AGENT, OR
26 BROKER; OR

27 (II) ACTS OR CLAIMS TO ACT UNDER THIS SUBTITLE.

28 (B) FOR THE PURPOSES OF THIS SECTION, THE COMMISSIONER:

1 **(1) SHALL BE GIVEN ACCESS TO ANY BOOKS, PAPERS, RECORDS,**
2 **SAFES, OR VAULTS OF THE PERSON UNDER INVESTIGATION;**

3 **(2) MAY SUBPOENA DOCUMENTS OR OTHER EVIDENCE; AND**

4 **(3) MAY SUMMON AND EXAMINE UNDER OATH ANY PERSON WHOSE**
5 **TESTIMONY THE COMMISSIONER REQUIRES.**

6 **12-1114.**

7 **(A) (1) IN ADDITION TO ANY OTHER PENALTIES OR DISCIPLINARY**
8 **ACTIONS AUTHORIZED UNDER THIS SUBTITLE, THE COMMISSIONER MAY ISSUE A**
9 **SUMMARY CEASE AND DESIST ORDER FOR CONDUCT THAT IS IN VIOLATION OF THIS**
10 **SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE.**

11 **(2) A SUMMARY CEASE AND DESIST ORDER ISSUED UNDER**
12 **PARAGRAPH (1) OF THIS SUBSECTION SHALL GIVE THE VIOLATOR:**

13 **(i) SUBJECT TO THE HEARING PROVISIONS OF § 12-1116 OF**
14 **THIS SUBTITLE, NOTICE OF THE OPPORTUNITY FOR A HEARING TO DETERMINE**
15 **WHETHER THE SUMMARY CEASE AND DESIST ORDER SHOULD BE VACATED,**
16 **MODIFIED, OR ENTERED AS FINAL; AND**

17 **(ii) NOTICE THAT THE SUMMARY CEASE AND DESIST ORDER**
18 **WILL BE ENTERED AS FINAL IF THE VIOLATOR DOES NOT REQUEST A HEARING**
19 **WITHIN 15 DAYS AFTER RECEIVING THE SUMMARY CEASE AND DESIST ORDER.**

20 **(B) (1) THE COMMISSIONER MAY ENFORCE SUBSECTION (A) OF THIS**
21 **SECTION BY:**

22 **(i) ISSUING AN ORDER:**

23 **1. TO CEASE AND DESIST FROM THE VIOLATION AND ANY**
24 **FURTHER SIMILAR VIOLATIONS; AND**

25 **2. REQUIRING THE VIOLATOR TO TAKE AFFIRMATIVE**
26 **ACTION TO CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR**
27 **PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION; AND**

28 **(ii) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$10,000 FOR**
29 **EACH VIOLATION.**

30 **(2) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER**

1 PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE AN
2 ADDITIONAL CIVIL PENALTY NOT EXCEEDING \$25,000 FOR EACH VIOLATION FROM
3 WHICH THE VIOLATOR FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR
4 FAILED TO TAKE AFFIRMATIVE ACTION TO CORRECT.

5 (C) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR
6 ANY COUNTY SEEKING ENFORCEMENT OF A CEASE AND DESIST ORDER ISSUED
7 UNDER THIS SECTION.

8 (D) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED
9 UNDER SUBSECTION (B) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

10 (1) THE SERIOUSNESS OF THE VIOLATION;

11 (2) THE GOOD FAITH OF THE VIOLATOR;

12 (3) THE VIOLATOR'S HISTORY WITH PREVIOUS VIOLATIONS;

13 (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON BUSINESSES
14 AND THE SALES-BASED FINANCING TRANSACTION INDUSTRY;

15 (5) THE ASSETS OF THE VIOLATOR; AND

16 (6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE
17 FINANCIAL PENALTY.

18 12-1115.

19 (A) SUBJECT TO THE HEARING PROVISIONS IN § 12-1116 OF THIS SUBTITLE,
20 THE COMMISSIONER MAY SUSPEND OR REVOKE A LICENSE IF THE LICENSEE:

21 (1) MAKES A MATERIAL MISSTATEMENT IN AN APPLICATION FOR A
22 LICENSE;

23 (2) IS CONVICTED OF:

24 (I) A FELONY; OR

25 (II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE
26 FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN THE BUSINESS OF
27 MAKING OR SOLICITING A SALES-BASED FINANCING TRANSACTION;

28 (3) IN CONNECTION WITH ENGAGING IN THE BUSINESS OF MAKING OR

1 SOLICITING A SALES-BASED FINANCING TRANSACTION:

2 (I) COMMITS FRAUD;

3 (II) ENGAGES IN AN ILLEGAL OR A DISHONEST ACTIVITY; OR

4 (III) MISREPRESENTS OR FAILS TO DISCLOSE ANY MATERIAL
5 FACTS TO ANYONE ENTITLED TO THAT INFORMATION;

6 (4) VIOLATES THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER
7 THIS SUBTITLE; OR

8 (5) OTHERWISE DEMONSTRATES UNWORTHINESS, BAD FAITH,
9 DISHONESTY, OR ANY OTHER QUALITY THAT INDICATES THAT THE BUSINESS OF THE
10 LICENSEE HAS NOT BEEN OR WILL NOT BE CONDUCTED HONESTLY, FAIRLY,
11 EQUITABLY, AND EFFICIENTLY.

12 (B) IN DETERMINING WHETHER A LICENSE SHOULD BE SUSPENDED OR
13 REVOKED FOR A REASON DESCRIBED IN SUBSECTION (A)(2) OF THIS SECTION, THE
14 COMMISSIONER SHALL CONSIDER:

15 (1) THE NATURE OF THE CRIME;

16 (2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES
17 AUTHORIZED BY THE LICENSE;

18 (3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE
19 CONVICTION TO THE FITNESS AND QUALIFICATION OF THE LICENSEE TO ENGAGE IN
20 THE BUSINESS OF MAKING OR SOLICITING A SALES-BASED FINANCING
21 TRANSACTION;

22 (4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

23 (5) THE BEHAVIOR AND ACTIVITIES OF THE LICENSEE SINCE THE
24 CONVICTION.

25 (C) IF THE COMMISSIONER SUSPENDS OR REVOKES A LICENSE, THE
26 COMMISSIONER SHALL FILE IN THE COMMISSIONER'S OFFICE:

27 (1) THE FINDINGS OF AN INVESTIGATION CONDUCTED UNDER THIS
28 SUBTITLE; AND

29 (2) A STATEMENT OF ALL THE FACTS ON WHICH THE FINDINGS ARE

1 BASED.

2 12-1116.

3 (A) BEFORE THE COMMISSIONER MAY TAKE ACTION UNDER § 12-1114 OR §
4 12-1115 OF THIS SUBTITLE, THE COMMISSIONER SHALL GIVE THE LICENSEE AN
5 OPPORTUNITY FOR A HEARING BEFORE THE COMMISSIONER.

6 (B) NOTICE OF THE HEARING SHALL BE GIVEN AND THE HEARING SHALL BE
7 HELD IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

8 (C) AN APPLICANT FOR A LICENSE THAT IS AGGRIEVED BY A DECISION OF
9 THE COMMISSIONER TO DENY THE APPLICATION OR A LICENSEE THAT IS
10 AGGRIEVED AS A RESULT OF AN ACTION TAKEN UNDER § 12-1114 OR § 12-1115 OF
11 THIS SUBTITLE MAY APPEAL IN ACCORDANCE WITH THE ADMINISTRATIVE
12 PROCEDURE ACT.

13 12-1117.

14 (A) A LICENSEE MAY NOT DIRECTLY OR INDIRECTLY ADVERTISE, PRINT,
15 DISPLAY, PUBLISH, DISTRIBUTE, OR BROADCAST A FALSE, MISLEADING, OR
16 DECEPTIVE STATEMENT REGARDING THE RATES, TERMS, COSTS, OR CONDITIONS OF
17 A SALES-BASED FINANCING TRANSACTION.

18 (B) EXCEPT AS AUTHORIZED BY THE COMMISSIONER, A LICENSEE MAY NOT
19 ENGAGE IN THE BUSINESS OF MAKING OR SOLICITING A SALES-BASED FINANCING
20 TRANSACTION OR ADVERTISE UNDER A NAME OTHER THAN THAT UNDER WHICH THE
21 LICENSEE IS LICENSED.

22 12-1118.

23 (A) (1) A LICENSEE SHALL USE THE PROJECTED SALES VOLUME OF A
24 RECIPIENT TO CALCULATE THE FOLLOWING INFORMATION RELATED TO A
25 SALES-BASED FINANCING TRANSACTION:

26 (I) THE ESTIMATED TERM OF REPAYMENT AND THE
27 PROJECTED PAYMENT AMOUNTS OF A SALES-BASED FINANCING TRANSACTION; AND

28 (II) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A
29 SALES-BASED FINANCING TRANSACTION.

30 (2) THE ESTIMATED ANNUAL PERCENTAGE RATE OF A SALES-BASED
31 FINANCING TRANSACTION SHALL BE CALCULATED:

1 (I) IN ACCORDANCE WITH THE TRUTH IN LENDING ACT; AND

2 (II) BASED ON THE ESTIMATED TERM OF REPAYMENT AND
3 PROJECTED SALES VOLUME OF A RECIPIENT.

4 (B) (1) A LICENSEE MAY CALCULATE THE PROJECTED SALES VOLUME OF
5 A RECIPIENT USING EITHER THE HISTORICAL METHOD OR THE OPT-IN METHOD.

6 (2) (I) A LICENSEE THAT USES THE HISTORICAL METHOD TO
7 CALCULATE THE PROJECTED SALES VOLUME OF A RECIPIENT SHALL USE AN
8 AVERAGE HISTORICAL VOLUME OF SALES OR REVENUE.

9 (II) A LICENSEE SHALL FIX THE HISTORICAL TIME PERIOD USED
10 TO CALCULATE THE AVERAGE HISTORICAL VOLUME AND USE THE SAME TIME
11 PERIOD FOR ALL DISCLOSURE PURPOSES FOR ANY SALES-BASED FINANCING
12 TRANSACTION PRODUCTS OFFERED.

13 (III) EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS
14 PARAGRAPH, THE FIXED HISTORICAL TIME PERIOD:

15 1. MAY NOT BE LESS THAN 1 MONTH AND MAY NOT
16 EXCEED 12 MONTHS; AND

17 2. SHALL BE THE TIME PERIOD DIRECTLY BEFORE THE
18 SPECIFIC OFFER WAS MADE.

19 (IV) A LICENSEE MAY CHOOSE TO USE THE AVERAGE SALES FOR
20 THE SAME NUMBER OF MONTHS AS THE LICENSEE WOULD HAVE USED UNDER
21 PARAGRAPH (3) OF THIS SUBSECTION WITH THE HIGHEST SALES VOLUME WITHIN
22 THE PAST 12 MONTHS.

23 (3) A LICENSEE MAY USE THE OPT-IN METHOD TO DETERMINE THE
24 INFORMATION LISTED UNDER SUBSECTION (A)(1) OF THIS SECTION BY USING A
25 PROJECTED SALES VOLUME THAT THE LICENSEE CHOOSES FOR EACH DISCLOSURE
26 IF THE RECIPIENT PARTICIPATES IN A REVIEW PROCESS ESTABLISHED BY THE
27 COMMISSIONER.

28 (C) A LICENSEE SHALL INFORM THE COMMISSIONER WHICH OF THE TWO
29 METHODS THE LICENSEE INTENDS TO USE WHEN CALCULATING THE ESTIMATED
30 ANNUAL PERCENTAGE OF EACH SALES-BASED FINANCING TRANSACTION.

31 (D) (1) ON OR BEFORE JANUARY 1 EACH YEAR, A LICENSEE SHALL

1 REPORT TO THE COMMISSIONER ON:

2 (I) THE ESTIMATED ANNUAL PERCENTAGE RATES GIVEN TO
3 EACH RECIPIENT; AND

4 (II) THE ACTUAL ANNUAL PERCENTAGE RATES OF EACH
5 COMPLETED SALES-BASED FINANCING TRANSACTION.

6 (2) (I) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
7 SUBSECTION SHALL CONTAIN ANY INFORMATION THE COMMISSIONER CONSIDERS
8 NECESSARY TO DETERMINE WHETHER THE DEVIATION BETWEEN THE ESTIMATED
9 ANNUAL PERCENTAGE RATES AND ACTUAL ANNUAL PERCENTAGE RATES OF
10 COMPLETED SALES-BASED FINANCING TRANSACTIONS IS REASONABLE.

11 (II) THE COMMISSIONER MAY CONSIDER EXTRAORDINARY
12 CIRCUMSTANCES WHEN DETERMINING WHETHER THE LICENSEE'S DEVIATION
13 BETWEEN THE ESTIMATED ANNUAL PERCENTAGE RATE AND ACTUAL ANNUAL
14 PERCENTAGE RATE OF A SALES-BASED FINANCING TRANSACTION IS REASONABLE.

15 (III) IF THE COMMISSIONER FINDS THAT THERE WAS AN
16 UNREASONABLE DEVIATION BETWEEN ESTIMATED AND ACTUAL ANNUAL
17 PERCENTAGE RATES OF SALES-BASED FINANCING TRANSACTIONS, THE
18 COMMISSIONER MAY REQUIRE THE LICENSEE TO USE THE HISTORICAL METHOD
19 INSTEAD OF THE OPT-IN METHOD IN DETERMINING THE PROJECTED SALES VOLUME
20 OF THE RECIPIENT.

21 12-1119.

22 (A) (1) EACH LICENSEE SHALL DISCLOSE THE FOLLOWING INFORMATION
23 TO A RECIPIENT AT THE TIME OF EXTENDING A SPECIFIC OFFER OF A SALES-BASED
24 FINANCING TRANSACTION IN THE FORM, AND IN ACCORDANCE WITH THE PROCESS,
25 THAT THE COMMISSIONER REQUIRES:

26 (I) THE TOTAL AMOUNT OF FUNDS PROVIDED;

27 (II) THE ESTIMATED ANNUAL PERCENTAGE RATE OF THE
28 SALES-BASED FINANCING TRANSACTION;

29 (III) THE TERM OR ESTIMATED TERM;

30 (IV) THE METHOD, FREQUENCY, AND AMOUNT OF PAYMENTS;

31 (V) ALL FEES CHARGED AND CHARGEABLE BY THE LICENSEE IN

1 CONNECTION WITH THE SALES-BASED FINANCING TRANSACTION;

2 (VI) A COMPLETE COPY OF THE SALES-BASED FINANCING
3 TRANSACTION AGREEMENT; AND

4 (VII) IF APPLICABLE, A DESCRIPTION OF COLLATERAL
5 REQUIREMENTS OR SECURITY INTERESTS.

6 (2) (I) FOR PAYMENT AMOUNTS THAT ARE FIXED, A LICENSEE
7 SHALL DISCLOSE:

8 1. THE PAYMENT AMOUNTS AND FREQUENCY; AND

9 2. IF THE PAYMENT FREQUENCY IS OTHER THAN
10 MONTHLY, THE AMOUNT OF THE AVERAGE PROJECTED PAYMENTS PER MONTH.

11 (II) FOR PAYMENT AMOUNTS THAT ARE VARIABLE, A LICENSEE
12 SHALL DISCLOSE:

13 1. THE PAYMENT SCHEDULE OR A DESCRIPTION OF THE
14 METHOD USED TO CALCULATE THE AMOUNTS AND FREQUENCY OF PAYMENTS; AND

15 2. THE AMOUNT OF THE AVERAGE PROJECTED
16 PAYMENTS PER MONTH.

17 (B) (1) IF THE RECIPIENT PAYS OFF OR REFINANCES THE SALES-BASED
18 FINANCING BEFORE THE END OF THE SCHEDULED REPAYMENT PERIOD, THE
19 LICENSEE SHALL DISCLOSE:

20 (I) THAT THE RECIPIENT MAY BE REQUIRED TO PAY THE FULL
21 AMOUNT OF THE TOTAL ORIGINALLY DISCLOSED TO THE RECIPIENT TO BE
22 COLLECTED OVER THE ORIGINALLY SCHEDULED TERM OF THE SALES-BASED
23 FINANCING IN ADDITION TO THE AMOUNT OF ANY FINANCE CHARGES OR
24 ADDITIONAL FEES OR CHARGES; AND

25 (II) HOW THE FINANCE CHARGE AND THE ADDITIONAL FEES OR
26 CHARGES WILL BE CALCULATED AND COLLECTED.

27 (2) IF THE RECIPIENT WILL BE REQUIRED TO PAY A FINANCE CHARGE
28 OR ANY ADDITIONAL FEES OR CHARGES, THE LICENSEE SHALL DISCLOSE THE
29 PERCENTAGE OF ANY UNPAID PORTION OF THE FINANCE CHARGE AND THE
30 MAXIMUM DOLLAR AMOUNT THE RECIPIENT COULD BE REQUIRED TO PAY.

1 12-1120.

2 (A) A LICENSEE MAY REQUIRE A RECIPIENT TO PAY OFF THE BALANCE OF
3 AN EXISTING SALES-BASED FINANCING TRANSACTION AS A CONDITION OF
4 OBTAINING A NEW SALES-BASED FINANCING TRANSACTION.

5 (B) IF A LICENSEE REQUIRES A RECIPIENT TO PAY OFF AN EXISTING
6 SALES-BASED FINANCING TRANSACTION BEFORE OBTAINING A NEW SALES-BASED
7 FINANCING TRANSACTION, THE LICENSEE SHALL DISCLOSE:

8 (1) THE AMOUNT OF THE NEW SALES-BASED FINANCING THAT WILL
9 BE USED TO PAY OFF THE PORTION OF THE EXISTING SALES-BASED FINANCING
10 THAT CONSISTS OF ANY REQUIRED PREPAYMENT CHARGES; AND

11 (2) ANY UNPAID INTEREST THAT WAS NOT FORGIVEN AT THE TIME
12 THE NEW SALES-BASED FINANCING WAS ENTERED INTO.

13 (C) (1) FOR FINANCING FOR WHICH THE TOTAL REPAYMENT AMOUNT IS
14 CALCULATED AS A FIXED AMOUNT, THE PREPAYMENT CHARGE IS EQUAL TO THE
15 ORIGINAL FINANCE CHARGE MULTIPLIED BY THE AMOUNT OF THE NEW
16 SALES-BASED FINANCING TRANSACTION USED TO PAY OFF THE EXISTING
17 SALES-BASED FINANCING TRANSACTION AS A PERCENTAGE OF THE TOTAL
18 REPAYMENT AMOUNT, MINUS ANY PORTION OF THE TOTAL REPAYMENT AMOUNT
19 FORGIVEN BY THE LICENSEE AT THE TIME OF PREPAYMENT.

20 (2) IF THE PREPAYMENT CHARGE IS MORE THAN ZERO, THE
21 LICENSEE SHALL RECORD THE AMOUNT AS THE ANSWER TO THE FOLLOWING
22 QUESTION:

23 "DOES THE NEW SALES-BASED FINANCING TRANSACTION INCLUDE ANY AMOUNT
24 THAT IS USED TO PAY UNPAID FINANCE CHARGE OR FEES, ALSO KNOWN AS DOUBLE
25 DIPPING? YES, [ENTER AMOUNT]".

26 (3) IF THE PREPAYMENT CHARGE IS ZERO, THE LICENSEE SHALL
27 RECORD THE ANSWER TO THE QUESTION IN PARAGRAPH (2) OF THIS SUBSECTION
28 AS "No".

29 (D) IF THE DISBURSEMENT AMOUNT OF THE NEW SALES-BASED FINANCING
30 TRANSACTION WILL BE REDUCED TO PAY DOWN ANY UNPAID PORTION OF THE
31 OUTSTANDING BALANCE OF THE EXISTING SALES-BASED FINANCING TRANSACTION,
32 THE ACTUAL DOLLAR AMOUNT BY WHICH THE DISBURSEMENT AMOUNT WILL BE
33 REDUCED.

1 12-1121.

2 A LICENSEE MAY NOT:

3 (1) TAKE A CONFESSION OF JUDGMENT OR A POWER OF ATTORNEY
4 AUTHORIZING THE LICENSEE OR A THIRD PARTY TO CONFESS JUDGMENT OR TO
5 APPEAR FOR THE RECIPIENT IN A JUDICIAL PROCEEDING;

6 (2) TAKE A NEGOTIABLE INSTRUMENT FROM A RECIPIENT IN WHICH
7 BLANKS ARE LEFT TO BE FILLED IN AFTER EXECUTION OF A CONTRACT; OR

8 (3) ENTER INTO A SALES-BASED FINANCING TRANSACTION WITH AN
9 ESTIMATED ANNUAL PERCENTAGE RATE THAT EXCEEDS 24%.

10 12-1122.

11 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR, ABUSIVE, OR DECEPTIVE
12 TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THE COMMERCIAL LAW
13 ARTICLE.

14 (B) A PERSON WHO VIOLATES THIS SUBTITLE IS:

15 (1) GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO
16 A FINE NOT EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 3 YEARS OR
17 BOTH; AND

18 (2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS
19 CONTAINED IN TITLE 13 OF THE COMMERCIAL LAW ARTICLE.

20 12-1123.

21 (A) THE COMMISSIONER SHALL HAVE SOLE AUTHORITY TO ENFORCE
22 COMPLIANCE WITH THIS SUBTITLE.

23 (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO CREATE OR AUTHORIZE A
24 PRIVATE RIGHT OF ACTION AGAINST A PERSON BASED ON COMPLIANCE OR
25 NONCOMPLIANCE WITH THIS SUBTITLE.

26 12-1124.

27 (A) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS
28 SUBTITLE.

1 **(B) THE COMMISSIONER MAY DETERMINE BY REGULATION ADDITIONAL**
2 **CHARGES TO BE INCLUDED IN THE FINANCE CHARGES USED IN §§ 12-1119 AND**
3 **12-1120 OF THIS SUBTITLE.**

4 SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
5 the application thereof to any person or circumstance is held invalid for any reason in a
6 court of competent jurisdiction, the invalidity does not affect other provisions or any other
7 application of this Act that can be given effect without the invalid provision or application,
8 and for this purpose the provisions of this Act are declared severable.

9 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2021.