



August 22, 2014

To All Licensees under the Motor Vehicle Sales Finance Act:

On behalf of the Commonwealth of Pennsylvania Department of Banking and Securities (the “Department”), I am pleased to announce that on December 1, 2014, Act 98 of 2013 (the “Act”), which created a codified Consumer Credit Code, will become effective. Contained within the Consumer Credit Code is an updated, modernized and consolidated Chapter 62 that governs motor vehicle sales finance (“MVSF”). **This chapter repeals and replaces the existing Motor Vehicle Sales Finance Act (“MVSFA”) on December 1, 2014.** Please note that this change in law **will not alter the upcoming license renewal period that begins in September of 2014.**

A link to the Act may be found on the Department’s website at www.dobs.state.pa.us. The Act also contains a Chapter 63, which regulates goods and services installment sales and replaces the current Goods and Services Installment Sales Act; however, **the Department does not have jurisdiction over Chapter 63 and Chapter 63 does not affect the MVSF.**

The Act was the result of a study conducted by the General Assembly’s Joint State Government Commission (“JSGC”) as required by amendments to the MVSFA contained in Act 186 of 2002. The JSGC convened a subcommittee of interest groups to conduct a thorough review of the MVSFA throughout 2005 and 2006, culminating in a report with draft legislation that was presented to the General Assembly in November of 2006 (“JSGC Report”). A link to the JSGC Report and the draft MVSF with explanatory comments can be found here: http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=35. Members of the subcommittee that conducted the review of the MVSFA included representatives of the Department, the Office of Attorney General, the Pennsylvania Automotive Association, the Pennsylvania Independent Automobile Dealers Association, the Pennsylvania Manufactured Housing Association and the Pennsylvania Recreation Vehicle and Camping Association.

The following summary of the changes to the MVSF from what currently exists in the MVSFA is taken largely from the JSGC Report.

Provisions relating to the conspicuousness of headings, notices and contract provisions are located in § 6103 of the general provisions (Chapter 61). It is the position of the Department that the typeface provisions of § 6103(b) only apply to installment sales contracts, consistent with the existing MVSFA. Chapter 61 also contains definitions for terms that will be used throughout Part IV (the Consumer Credit Code) and provisions regarding electronic transactions.

GLENN E. MOYER – SECRETARY OF BANKING AND SECURITIES

Market Square Plaza | 17 N Second Street, Suite 1300 | Harrisburg, PA 17101 | 717.787.6991 | F 717.214.0808 |

www.dobs.state.pa.us

The MVSF differs from the MVSFA in several aspects. Unlike the MVSFA, § 6202 defines the terms “recreational vehicle,” “service contract,” “unpaid purchase price balance” and “warranty.” The MVSF does not define or reference “mobile homes;” instead, it replaces the term with “manufactured home,” consistent with the terminology used in the manufactured housing industry. The definition of “motor vehicle” in the MVSF explicitly includes a manufactured home and a recreational vehicle. The official comment to § 6202 clarifies that for the purpose of calculating interest rates, the definition of “finance charge” under § 6202 applies; however, the definition of “finance charge” under Regulation Z of the Federal Truth in Lending Act is to be used with respect to disclosure requirements under the MVSF. The MVSF also replaces the term “default charge” with “late charge” throughout the statute.

In terms of charges regarding motor vehicle sales finance, the MVSF takes a slightly different approach from the MVSFA. First, references to estimated insurance charges under Section 14.B.4 of the MVSFA are not incorporated into § 6222 of the MVSF. Second, the MVSF does not contain the minimum finance charges referenced in Sections 19.E and 20.B of the MVSFA. Third, although § 6245(b)(1) codifies part of Section 21 of the MVSFA, several changes were made for clarification purposes.

Other principal differences between the MVSFA and the MVSF specifically include the following:

- (1) The gross vehicular weight under the definition of “heavy commercial motor vehicle” is changed from 15,000 to 13,000, to make it consistent with the Federal Motor Carrier Safety regulations. (§ 6202)
- (2) The Department must provide a copy of the provisions of Chapter 62 to each licensee in conjunction with the license application process, with such information to be made available to the licensee’s employees and to buyers of motor vehicles. (§ 6207)
- (3) Specific venue provisions are included in the statutory framework. (§ 6208)
- (4) An initial license application must contain the physical street address of the place of business, and a post office box address is no longer adequate. (§ 6212(b)(2))
- (5) The amount of the bond for a sales finance company is increased from \$5,000 to \$10,000. (§ 6213(c)(1))
- (6) A licensee desiring to change its business address must retain a copy of the license certificate for display during the period that it is awaiting an amended license certificate, thereby codifying a standard industry practice. (§ 6215(c)(1)(iii))
- (7) A license renewal application must contain an update of specific required information. (§ 6216(3))
- (8) In determining whether to issue or renew a license, the Department may not consider whether the applicant’s spouse has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of specified offenses. (§ 6217(b)(2) and (3))

- (9) In determining whether to issue or renew a license, the Department may not consider whether a specified person has pleaded guilty to, has entered a plea of nolo contendere to or has been convicted of specified offenses, if the plea or conviction occurred more than ten years before the filing of the application. (§ 6217(b)(2) and (3))
- (10) The \$0.50 charge for a duplicate copy of the installment sale contract or an additional statement of account is replaced by “a reasonable fee not to exceed the cost of production.” (§§ 6221(b)(3) and 6230(b)(2))
- (11) An installment sale contract must contain a statement that a buyer may have additional rights under the Unfair Trade Practices and Consumer Protection Law. (§ 6222(9))
- (12) An installment sale contract may contain an acceleration clause that authorizes the seller or holder to declare the entire balance due and payable if the buyer files for bankruptcy, defaults in the payment of a cross-collateralized obligation or had provided intentionally fraudulent and misleading information on a credit application. (§ 6228(2)(v) through (vii))
- (13) After a buyer pays the total amount owing under an installment sale contract, a holder must indicate on the specified instruments that the buyer’s obligation has been paid in full and must, upon request, return such instruments to the buyer. (§ 6232(a)(1) and (2))
- (14) “On-the-spot” delivery of the certificate of title is not required; however, delivery must occur within ten days of the date of tender of payment in full of the buyer’s obligation under the installment sale contract. (§ 6232(b))
- (15) An installment seller of a manufactured home may charge appraisal fees, brokerage fees and commissions, if they represent actual charges and are properly disclosed to the buyer. (§ 6233(c))
- (16) A buyer’s waiver of the provisions of Chapter 62, including any purported waiver effected by a contractual choice of the law of another jurisdiction contained in an installment sale contract, is deemed contrary to public policy and is void and unenforceable. (§ 6234(b))
- (17) Only the costs of necessary repairs disclosed at the time of the installment sale may be included in the contract; necessary repairs arising after the execution of the contract may not be added to the original contract. (§ 6242(f)(2))
- (18) An installment seller may compute an authorized finance charge by any method, if the charge does not exceed the specified applicable maximum percentage. This codifies the position of the Department expressed in a Secretary’s Letter dated July 2, 1982. (§ 6243(b)(1))
- (19) A refinance charge for a manufactured home is determined by regulation of the Federal Housing Administration, pursuant to the National Housing Act. (§ 6244(b)(3))

- (20) If a refinance charge for a motor vehicle is insured or guaranteed in whole or in part by the Veterans' Administration or another department or agency of the United States Government, the laws or regulations that govern the Federal department or agency regarding the maximum refinance charge and rate of interest for the refinancing will govern. (§ 6244(b)(4))
- (21) The secured transactions provisions of the Uniform Commercial Code generally limit the provisions under Chapter 62 regarding the repossession of a motor vehicle in a transaction involving a commercial purpose. (§ 6251(c))
- (22) A notice of repossession must contain the name and address of the person that the buyer may contact to receive a full statement of account. (§ 6254(c)(7))
- (23) If personal property is left in the motor vehicle after the specified 30-day time period, the holder may dispose of the personal property in any manner that it chooses. (§ 6255)
- (24) Upon the sale of a repossessed motor vehicle to a purchaser, a seller or holder must provide to the purchaser the title to the vehicle and all necessary documents to effect the transfer of the vehicle. (§ 6260(c))
- (25) The seller or holder must deliver a deficiency notice, containing specific provisions, to the buyer within 30 days after the sale of the repossessed motor vehicle. (§ 6261(d))
- (26) The dollar amount for attorney fees charged prior to the commencement of legal action regarding an installment sale contract for a manufactured home is raised from \$50 to \$150. (§ 6262(d)(2)(ii))

This letter is not intended as and does not constitute legal advice. Please keep in mind that this letter contains generalizations regarding the Act discussed herein and is therefore not inclusive of all of its provisions, conditions, exceptions, and details. **It is critically important for you to read the Act and seek guidance from your legal counsel and trade association regarding the effects of the Act on your business operations.**

Questions regarding the provisions of the Act should be addressed to Ryan Walsh, Chief, Compliance Office, at (717) 772-3889. We at the Department look forward to working with you in order to seamlessly implement the Act in Pennsylvania in the coming months.

Sincerely,

/s/ Glenn E. Moyer
Secretary of Banking and Securities