Heitmeier (SB 921) **Act No. 794**

Enacts the Louisiana Motor Vehicle Sales Finance Act.

Provides that the parties to a motor vehicle credit transaction may agree to the application of the law of the place where the motor vehicle transaction was entered into or the law of the residence of the consumer shall apply.

Provides when an action is brought in Louisiana to enforce rights arising from a motor vehicle credit transaction in another state, although that state's law will contractually govern, the extender of credit shall reduce the charges sought to be collected so that they do not exceed the maximum under Louisiana law.

Provides that agreements by a consumer in a motor vehicle transaction in which the consumer consents to jurisdiction of another state and that fix venue are invalid.

Provides all fees and charges are 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.

Excludes the following:

(1) Extensions of credit to business entities, including government agencies;

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

(3) Open-end credit transactions;

(4) Consumer credit transactions subject to the Louisiana Consumer Credit Law;

(5) Credit transactions by credit unions to its members; and

(6) Federally related mortgage loans.

Requires all persons financing the purchase or acquisition of a motor vehicle to comply with the requirements of the laws relative to distribution and sale of motor vehicles, R.S. 32:1251 et seq., and the rules and regulations of the Louisiana Motor Vehicle Commission pertaining to advertising.

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

Allows the parties to a motor vehicle credit transaction to contract that the transaction will be subject to the Louisiana Consumer Credit Law which will make the transaction a consumer credit transaction. A lender may not contract more than 4 motor vehicle credit transactions under the Louisiana Consumer Credit Law over any calendar year without complying with the licensing requirements of that law, unless the lender is exempt.

Provides that if a motor vehicle transaction subject to these provisions is refinanced, the refinancing transaction may be made, at the creditor's option, under new law or the Louisiana Consumer Credit Law.

Provides that for guidance and interpretation, comparable rules, definitions and principles may be found under the Federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

Allows an extender of credit to impose and collect additional fees and charges contractually provided for under the consumer's promissory note, installment sales contract or credit agreement.

Provides the maximum loan finance charge may not exceed:

(1) The sum of:

(a) 36% per anum for that portion of the unpaid principal amount of the loan not exceeding $1,400.00;

(b) 27% per anum for that portion of the unpaid principal amount of the loan exceeding $1,400.00 and not exceeding $4,000.00;

(c) 24% per anum for that portion of the unpaid principal amount of the loan exceeding $4,000.00 and not exceeding $7,000.00;

(d) 21% per anum for that portion of the unpaid principal amount of the loan exceeding $7,000.00; or alternatively.

(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 regardless of the amount.

Does not limit the manner of contracting for loan finance charges so long as the annualized loan finance charge rate does not exceed the maximum rates permitted by new law.

Provides the term of a consumer loan commences with the date the contract is signed or

the funds advanced, whichever comes first, and differences in length of months may be disregarded and a day may be counted as 1/30 of a month.

Allows the extender of credit to contract for and receive a minimum loan finance charge of not more than $15 when the amount financed is less than $200, or $20 when the amount financed exceeds $200 with such charge in lieu of all other loan finance charges.

Provides that except as otherwise provided, the maximum credit service charge for any consumer credit sale that may be charged, contracted for or received may not exceed:

(1) Class 1. 18% per anum for any new motor vehicle designated by the manufacturer by a year model not earlier than the year that the sale is made.

(2) Class 2. 24% per anum 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 2 years prior to the year in which the sale is made.

(3) Class 3. 27% per anum for any used motor vehicle not in Class 2 and designated by the manufacturer by year model not more than 4 years prior to the year in which the sale is made.

(4) Class 4. 33% per anum for any used motor vehicle not in Class 2 or 3 and designated by year model more than 4 years prior to the year which the sale is made.

Provides the obligation arising out of any consumer credit sale may be evidenced by a written contract which must be transferred or assigned to an assignee that is licensed or that is exempt from licensing, within 35 days from the date of making. If the assignment is not made within the time limit, the seller shall:

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

(2) Credit the obligation with any amounts contracted for in excess of the credit service charge.

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

(4) Notify the consumer of the address where payments are to be made.

Provides the rate of the loan finance charge or the credit service charge 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.

Provides the effect of leap year may be disregarded.

Allows an extender of credit to enter into variable rate motor vehicle transactions.

Allows the parties to contract for payment of late charges not paid within 10 days in an amount not exceeding the greater of:

(1) 5% of the amount in default, not to exceed $15; or

(2) the deferral charge that would be permitted to defer for the period that is delinquent.

Provides a delinquency charge may be collected only once on an installment or other payment however long it remains delinquent and no delinquency charge may be collected when payment is made in full within 10 days after its scheduled due date.

Prohibits an extender of credit from assessing or collecting any delinquency charge when the only delinquency is attributable to delinquency charges assessed on earlier installments.

Provides the extender of credit is not prohibited from assessing and collecting a loan finance charge on any delinquency or deferral charges not paid when due.

Provides if 2 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.

Allows an extender of credit to contractually reserve the right to prospectively increase the simple interest rate under a motor vehicle transaction at any time following the consumer's default.

Allows the parties to a precomputed transaction to agree in writing to a deferral of all or part of one or more unpaid installments, and the extender of credit may collect a deferral charge provided it is not greater than the maximum rates permitted by new law.

Provides the parties at the time of the precomputed transaction may agree in writing that if the installment is not paid within 10 days after its due date, the extender of credit may unilaterally grant a deferral and make deferral charges.

Provides the parties may agree in writing, before or after default, to a deferral of all or

part of unpaid installments, and the extender of credit may make an additional deferral charge not greater than $25, which may be collected at the time it is assessed or anytime thereafter.

Allows the extender of credit to make, in addition to the deferral charge, appropriate charges for insurance for the extended period and the amount not paid in cash may be added to the amount calculated for the deferral charge.

Allows the parties in a motor vehicle credit transaction to contract for an additional charge for a consumer's payment which is returned due to insufficient funds. Such charge shall be 5% of the amount of the check but shall not exceed $15.

Provides the seller or extender of credit may charge the consumer a documentation fee of $35 for services performed documenting a motor vehicle transaction and may charge an additional $10 for services performed in obtaining the vehicle license and/or title.

Allows the seller or extender of credit to charge the consumer a notary fee of $15 per single transaction.

Provides a consumer may transfer his equity in a secured motor vehicle to another person upon written agreement by the holder of the consumer's contract and the holder is entitled to a transfer of equity fee of no more than $25.

Provides in a transaction under which the consumer has the option to transfer title and ownership to the seller, the extender of credit may contract for and receive additional fees and charges to include disposition fees, excess wear and tear fees and excess mileage charges.

Allows an extender of credit to contract for and receive payment of additional fees and charges not specifically mentioned in new law provided such fees and charges are not considered to be additional finance charges.

Provides the seller in a consumer credit sale shall disclose to the consumer, in the contract or in a separate writing, the amount and identity of each item, fee or charge that is included in the cash price and the amount deferred under the transaction.

Allows the consumer to prepay in full the unpaid balance at any time.

Requires the extender of credit, upon prepayment in full of a precomputed transaction, to refund unearned precomputed loan finance charges or credit service charges. The refund shall represent at least 90% as great a portion of the loan finance charge or credit service charge, after first deducting from such precomputed charge a prepayment charge of $25 or less, 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 monthly balances under the schedule of payments in the contract.

Allows an extender of credit to charge a $25 prepayment charge to the consumer upon prepayment in full of a simple interest transaction.

Provides if the following conditions are satisfied, there is no requirement that prepaid finance charges be rebated upon prepayment in full of a simple interest transaction:

(1) The original amount financed or deferred was $5,000 or more.

(2) The original scheduled term was 24 months or longer.

(3) Prepaid finance charges assessed under the transaction did not exceed 5% of the original amount financed or deferred, unless the credit transaction involved a manufactured home.

Provides 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 in R.S. 6:969.20(A) as if prepayment in full had been made as of the date of maturity of the obligation is accelerated at the creditor's election.

Provides if the maturity of a simple interest transaction is accelerated for any reason, the extender of credit may charge the consumer a $25 prepayment charge.

Allows a motor vehicle credit contract to provide for payment by the consumer of collection/enforcement attorney fees not to exceed 25% of the total amount payable under the transaction.

Requires the consumer to be obligated to reimburse the extender of credit for collection costs and expenses incurred in collecting the consumer's obligation and enforcing the creditor's security rights against the secured motor vehicle and any other collateral.

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

Allows the extender of credit to require a consumer to provide consumer credit insurance as additional security under the transaction and may offer the consumer credit insurance for purchase on an optional basis. The cost of consumer credit insurance is deemed to be a portion of the credit service charge or loan finance charge for the purpose of computing maximum rates.

Allows consumer credit insurance to be written with respect to each individual who is an obligor or co-obligor under a motor vehicle credit transaction. The amount of credit insurance coverage shall not exceed the total sum payable under the contract including all loan finance charges and credit service charges.

Sets the premium rates as follows:

(1) Declining balance credit life insurance shall not exceed 80 cents per $100 per year.

(2) Level term credit life insurance shall not exceed $1.60 per $100 per year.

(3) Joint credit life insurance shall not exceed $1.20 per $100 per year.

(4) Joint level term credit life insurance shall not exceed $2.40 per $100 per year.

(5) Credit dismemberment insurance shall not exceed 25 cents per $100 per year.

Provides that no policy of credit health and accident insurance may be issued pursuant to a motor vehicle credit transaction other than 7, 14, and 30 day retroactive health and accident and sets the premium rates.

Allows an extender of credit to request or require a consumer to insure the secured motor vehicle and its use and operation, and any additional collateral, and include the cost of the insurance as a separate charge in the contract.

Provides every seller or lender who obtains or provides insurance shall inform the consumer in writing as to whether or not such insurance satisfies the requirements of the Motor Vehicle Safety Responsibility Law and compulsory motor vehicle liability security. When such insurance does not satisfy those requirements, the seller or lender shall advise the consumer of the law and penalties.

Allows the seller or lender to offer the option of gap coverage to protect 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 the vehicle.

Provides when consumer credit insurance is required, the extender of credit shall furnish the consumer a statement clearly indicating that such insurance is required and that the consumer shall have the option of providing proof with existing policies of insurance.

Requires any insurance provided, sold or obtained through an extender of credit be written at lawful rates and in accordance with the Louisiana Insurance Code and provides

that the extender of credit shall not be liable to the insured as a result of the insurer's inability to pay any claim due to insolvency, rehabilitation, conservation, liquidation or dissolution.

Allows the consumer to have the option of purchasing required or requested insurance from an agent or broker of his selection and of selecting the insurance company acceptable to the extender of credit and the inclusion of the insurance premium in the contract shall be optional with the extender of credit.

Provides if the extender of credit provides or obtains insurance the extender of credit shall send the policy or certificate within 45 days after the term of the insurance commences or promptly notify the consumer of any failure or delay in providing or obtaining the insurance, policy or certificate.

Provides when the motor vehicle transaction is paid in full the insurance shall be canceled unless there has been a specific request from the consumer that such insurance continue to remain in force.

Provides when insurance paid by the consumer is terminated for any reason, the refund for unearned premium shall be applied toward payment of the new insurance premium or toward the unpaid balance of the motor vehicle credit transaction at the creditor's option.

Provides that intentional violations or violations not caused by good faith errors and discovered as a result of a written consumer complaint shall have the following effects on the parties:

(1) If the court finds the extender of credit has violated the provisions regulating loan finance charges, credit service charges, and other fees and charges, the affected consumer is entitled to a refund of all loan finance or credit service charges and has the right to recover three times the amount of such charges and reasonable attorney fees. The right to recover the civil penalty accrues only after:

    (a) the affected consumer delivers written notice to the extender of credit by certified mail;

    (b) a copy of such notice is mailed to the extender of credit's agent for service of process; and

    (c) 30 days has passed since receipt of such notice and the violation has not been corrected.

(2) If the notices have been given by the consumer, the extender of credit shall be presumed to have committed either an intentional violation or violation not

resulting from good faith if the extender of credit fails to return or give credit for an overcharge or fails to return a deficiency in the rebate, provided such overcharge or deficiency exceeds the greater of 10% of such loan finance charge, credit service charge, or rebate, or $15.

(3) If the extender of credit fails to return or give credit for an overcharge or deficiency, in addition to the above penalties, 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 $100 of his actual out-of-pocket expenses incurred as a result of such failure to act.

(4) In the case of multiple violations involving an overcharge, the extender of credit must notify the commission of the existence of such multiple violations and must give a reasonable description within 30 days after receipt of written notice from the complaining consumer and the extender of credit must correct such multiple violations within 30 days. The commission may grant two 30 day extensions within which the extender must correct such violations.

Provides that unintentional violations or violations caused by good faith errors and discovered as a result of written consumer complaint shall have the following effects on the parties:

(1) If a violation 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 new law the court may require the extender of credit to correct the violation, but the consumer is not entitled to civil remedies.

(2) If a complaining consumer gives the extender of credit written notice of an alleged violation, the extender of credit must give the complaining consumer a reasonable response to the consumer within 30 days of receipt of written notice. If the extender of credit fails to give such response timely, the complaining consumer shall be entitled to collect up to $100 for out-of-pocket expenses.

Provides an extender of credit has no liability for civil remedies in all instances, if within 60 days after discovering a violation, or within 30 days following receipt of notice from the consumer, the extender of credit corrects the violation.

Provides the written notice required may be mailed by registered, certified, first class, or air mail at the sender's option.

Requires any civil action to be brought within one year of the date of violation.

Provides attorney fees are to be computed based on time reasonably expended and not on

contingency.

Provides that the remedies are exclusive and apply prospectively to all motor vehicle credit transactions consummated on or after July 1, 1999.

Provides any action taken by the 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.

Provides that no person shall engage in the business of making consumer loans or the origination of consumer credit sales without a license from the commission or is exempt.

Requires an assignee be licensed by the commission prior to taking assignments of and undertaking direct collection of payments from or enforcing rights against consumers under a consumer loan or consumer credit sale.

Provides a fine of $1,000 for each contract originated or purchased without that person being properly licensed with said fine being payable to the commission.

Exempts the following from the licensing requirements:

(1) Supervised financial organizations.

(2) Trusts and trustees.

(3) Assignees with no offices in this state holding motor vehicle contracts on an interim basis for a period of 90 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 new motor vehicle dealers to the extent that they regularly sell, assign and transfer contracts originated by them to third party assignees within 60 days following origination. A licensed new motor vehicle dealer may retain at any one time, a maximum of 12 contracts for its own account without being subject to the

licensing requirements.

Allows the commission to waive the licensing and examination requirements for a subsidiary of an entity as listed above.

Requires an application for a license to be in writing, under oath and in the form prescribed by the commission.

Provides for a license fee of $200 per calender year for the principle place of business and $200 for each additional branch of the licensee maintained in Louisiana.

Provides license fees shall be in addition to other fees and taxes paid by the licensee.

Requires each license to specify the location of the office or branch and further requires the license must be conspicuously displayed if said office or branch is located in Louisiana.

Provides the license is not transferrable or assignable and expires the last day of December following the date of issuance.

Allows the commission to deny renewal of a license or to suspend or revoke a license for the following grounds:

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

(2) Failure to comply with any provision of new law relating to motor vehicle credit transactions.

(3) Defrauding any consumer purchaser of a motor vehicle to the consumer's damage.

(4) Fraudulent misrepresentations, circumvention or concealment by the licensee of any of the material particulars required to be stated or furnished to the consumer.

Provides that the licensee shall be responsible for the acts of its agents.

Requires a hearing prior to the denial, suspension or revocation of a license.

Allows for an appeal within 30 days of the denial, suspension or revocation of a license, following the hearing, to the district court for the parish of Jefferson, which is the domicile of the commission.

Gives the commission the powers to investigate and subpoena when it has reason to believe a provision of new law has been violated.

Allows a consumer to file written complaints with the commission when there is reason to believe a violation has occurred.

Provides the commission shall have the power to issue subpoenas to compel witnesses and the production of documents and to administer oaths and affirmations to witnesses.

Provides if a person refuses to obey the commission's subpoena or to give testimony, any judge for the parish of Jefferson may issue a court order for process of the subpoena.

Provides if a person refuses to obey the court order, the judge may order an attachment for contempt punishable by a fine not exceeding $100 or by imprisonment, or by both.

Provides the commission is vested with the powers and duties necessary to effectively carry out the provisions and objects of new law.

Provides a per diem of $50 per day and reimbursement for actual expenses to the commission members and the chairman.

Provides the commission may issue a fine not to exceed $5,000 per violation for willful violation of new law.

Allows the commission to render judgment for costs against any party to proceedings held or scheduled to be held.

Provides that any person required to be licensed who fails to timely purchase a license may be ordered to pay an additional $100 to the regular license fee.

Repeals R.S. 6:951 - 964.

Effective upon signature of the governor (July 2, 1999).

(Adds R.S. 6:969.1 - 969.41; repeals R.S. 6:951 - 964)