

Regular Session, 1999

SENATE BILL NO. 921 (DUPLICATE OF HOUSE BILL NO. 1136)

BY SENATOR HEITMEIER AND REPRESENTATIVE PINAC

MOTOR VEHICLES. Provides for motor vehicle credit transactions. (2/3-CA7s1(A) (gov sig)

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AN ACT

To enact Chapter 10-B of Title 6 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 6:969.1 through 969.41, and to repeal Chapter 10 of Title 6 of the Louisiana Revised Statutes, comprised of R.S. 6:951 through 964, relative to the Motor Vehicle Sales Finance Act; to provide for a short title; to provide for the scope of the Chapter; to provide for certain exclusions; to provide for a waiver and an agreement to forego rights; to provide relative to agreements to contract and of financing; to provide for definitions; to provide for terms, construction, and additional fees and charges; to provide for construction against implicit repeal; to provide for consumer loans; to provide for a consumer credit sale; to provide for maximum charges after negotiations; to provide for maximum charges after maturity; to provide for the impact of leap years; to provide for variable rates; to provide for maximum delinquency charges; to provide for maximum deferral charges; to provide for charges for checks returned for

1 insufficient funds; to provide for documentation fees; notary fees,
2 transfer of equity and other fees and for disclosure; to provide for the
3 right to prepay; to provide for rebates upon prepayment and
4 prepayment charges; to provide for rebate after acceleration of
5 maturity; to provide for attorney fees; to provide for collection and
6 enforcement costs and expenses; to provide for use of multiple
7 agreements; to provide for consumer credit insurance; to provide for
8 property insurance; to provide for existing insurance; to provide for
9 limitations on insurance rates and contract requirements; to provide for
10 a choice of insurer; to provide for conditions applying to insurance
11 provided by the extender of credit; to provide for cancellation of
12 insurance and refund or credit upon cancellation; to provide for gain
13 from insurance; to provide for the effect of violations on rights of
14 parties; to provide for guidance by commission and advisory opinions;
15 to provide authorization for consumer loans and assignees; to provide
16 for license not required; to provide for licensing procedures; to provide
17 for denial, suspension or revocation of licenses; to provide for
18 investigations and complaints; to provide for powers of the
19 commission; to provide for penalties imposed by the commission; and
20 to provide for related matters.

21 Be it enacted by the Legislature of Louisiana:

22 Section 1. Chapter 10-B of Title 6 of the Louisiana Revised Statutes,
23 comprised of R.S. 6:969.1 through 969.41, is hereby enacted to read as
24 follows:

25 CHAPTER 10-B. LOUISIANA MOTOR VEHICLE SALES

26 FINANCE ACT

27 **Chapter 10 is all proposed new law.**

1 PART I. GENERAL PROVISIONS AND DEFINITIONS

2 **Part I is all proposed new law.**

3 §969.1. Short title

4 **R.S. 6:969.1 is all proposed new law.**5 This Chapter shall be known and may be cited as the Louisiana
6 Motor Vehicle Sales Finance Act.

7 §969.2. Scope

8 **R.S. 6:969.2 is all proposed new law.**9 A. Subject to the provisions of Subsections B and C of this
10 Section, the parties to a motor vehicle credit transaction may agree that
11 the law of the place where the motor vehicle credit transaction is
12 entered into or the law of another state shall apply.13 B. Whenever an action is brought in this state to enforce rights
14 arising from a motor vehicle credit transaction wherever made, and
15 whatever state's law shall contractually govern, the extender of credit
16 shall, where applicable, reduce the charges sought to be collected so
17 that they do not exceed those provided in this Chapter. This
18 requirement applies only to then unpaid charges sought to be collected.
19 The extender of credit shall not be required to refund or credit the
20 consumer for any charges previously paid that are permitted under the
21 laws of the chosen forum, but which are in excess of those permitted
22 under this Chapter.23 C. Except as otherwise provided herein, the agreements by a
24 consumer to consent to the jurisdiction of another state and fix venue
25 are invalid with respect to motor vehicle credit transactions, or
26 modifications thereof, to which this Chapter applies.

27 D. All fees and charges authorized under this Chapter, whether

1 or not such fees and charges constitute or are considered to be loan
2 finance charges or credit service charges, shall be deemed to be
3 "material to the determination of the interest rate" for purposes of
4 exportation to consumers residing in other states under the most
5 favored lender doctrine of federal law.

6 §969.3. Exclusions

7 **R.S. 6:969.3 is all proposed new law.**

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

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

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

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

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

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

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

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

1 §969.4. Waiver, agreement to forego rights

2 **R.S. 6:969.4 is all proposed new law.**

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

6 §969.5. Agreement to contract; refinancing

7 **R.S. 6:969.5 is all proposed new law.**

8 A. The parties to a motor vehicle credit transaction may
9 contract with one another that such transaction shall be subject to the
10 provisions of the Louisiana Consumer Credit Law (R.S. 9:3510, et
11 seq.), in which event the transaction shall be a consumer credit
12 transaction within the provisions of that statute. However, unless a
13 lender is exempt from the licensing requirements of the Louisiana
14 Consumer Credit Law (R.S. 9:3560), a lender may not contract more
15 than four motor vehicle credit transactions under the Louisiana
16 Consumer Credit Law over any calendar year without first complying
17 with the licensing requirements of R.S. 9:3554, et seq.

18 B. If a motor vehicle credit transaction subject to this Chapter
19 is refinanced, the refinancing transaction may be made, at the creditor's
20 option, subject to this Chapter or subject to the Louisiana Consumer
21 Credit Law.

22 §969.6. Definitions

23 **R.S. 6:969.6 is all proposed new law.**

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

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

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

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

20 (4) "Commission" means the Louisiana Motor Vehicle
21 Commission.

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

25 (6) "Consumer credit insurance" means insurance, other than
26 insurance on property, by which the satisfaction of debt in whole or in
27 part is a benefit provided, but does not include insurance indemnifying

1 the extender of credit against loss due to the debtor's default and non-
2 filing insurance.

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

14 (8) "Consumer loan" means a loan of money or its equivalent
15 made by a lender, the proceeds of which are used by the consumer to
16 purchase or refinancing the purchase of a motor vehicle, with the lender
17 acquiring a purchase money security interest in the purchased motor
18 vehicle. A consumer loan may be secured by other collateral in
19 addition to the purchased vehicle.

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

23 (10) "Contract rate" means the interest rate factor applied to
24 compute precomputed interest or simple interest under the transaction.

25 (11) "Credit health and accident insurance" means disability
26 insurance purchased in conjunction with a motor vehicle credit
27 transaction which provides for a monthly benefit sufficient to pay all

1 or part of the required monthly payment, during the continued disability
2 of the insured, over the term of coverage.

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

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

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

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

19 (b) The term does not include default charges, delinquency
20 charges, charges for checks returned for having non-sufficient funds,
21 documentation fees, other fees manufactured housing appraisal and title
22 search fees, and charges permitted under this Chapter, and any
23 additional fees and charges that the seller agrees to finance under the
24 transaction that are not considered to be a finance charge under 12
25 C.F.R. 226.4.

26 (14) "Down payment" means an amount, including the value of
27 any property used as a trade-in, paid to a seller to reduce the cash price

1 of a motor vehicle purchased under a consumer credit sale.

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

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

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

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

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

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

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

27 (19) "Manufactured home" means a structure, transportable in

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

13 (20) "Motor vehicle" means any new or used transportation
14 device, including automobiles, motorcycles, trucks and other vehicles
15 that are operated over the public highways and the streets of this state,
16 but does not include traction engines, boat trailers, road rollers,
17 implements of husbandry and other agricultural vehicles. A
18 manufactured home is deemed to be a "motor vehicle" for purposes of
19 this Chapter only if it is anticipated at the time of the transaction that
20 the manufactured home will not be immobilized pursuant to R.S.
21 9:1149.4.

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

25 (22) "Person" means an individual or corporation, partnership,
26 limited liability company, trust, association, joint venture pool,
27 syndicate, sole proprietorship, unincorporated organization, or any

1 other form of entity not specifically listed herein.

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

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

16 (25) "Pro rata" as used in this Chapter refers to a method of
17 computing deferral charges by dividing the precomputed loan finance
18 charge or precomputed credit service charge by the total number of
19 days in the contract term and multiplying the sum by the number of
20 days that are deferred.

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

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

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

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

10 §969.7. Terms; construction; additional fees and charges

11 **R.S. 6:969.7 is all proposed new law.**

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

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

26 §969.8. Construction against implicit repeal

27 **R.S. 6:969.8 is all proposed new law.**

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

5 PART II. MAXIMUM CHARGES

6 **Part II is all proposed new law.**

7 §969.9. Consumer loans

8 **R.S. 6:969.9 is all proposed new law.**

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

12 (1) The sum of all of the following:

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

16 (b) Twenty-seven percent per annum for that portion of the
 17 unpaid principal amount of the loan exceeding one thousand four
 18 hundred dollars and not exceeding four thousand dollars.

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

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

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

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

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

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

25 §969.10. Consumer credit sale

26 **R.S. 6:969.10 is all proposed new law.**

27 A. Except as otherwise provided by R.S. 6:969.11, the

1 maximum credit service charge for any consumer credit sale that may
2 be charged, contracted for or received may not exceed:

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

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

10 (3) Class 3. For any used motor vehicle not in Class 2 and
11 designated by the manufacturer by year model not more than 4 years
12 prior to the year in which the sale is made: Twenty-seven percent per
13 annum.

14 (4) Class 4. For any used motor vehicle not in Class 2 or Class
15 3 and designated by the manufacturer by year model more than 4 years
16 prior to the year in which the sale is made: Thirty-three percent per
17 annum.

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

26 C. For purposes of this Section, the term of a consumer credit
27 sale commences with the date the contract is signed or the sale of the

1 motor vehicle is complete, whichever occurs first. Differences in
2 lengths of months may be disregarded and a day may be counted as
3 one-thirtieth of a month. Subject to classifications and differentiations
4 the lender may reasonably establish, a part of a month in excess of
5 fifteen days may be treated as a full-month if periods of fifteen days or
6 less are disregarded and if that procedure is not constantly used to
7 obtain a greater yield than would otherwise be permitted.

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

13 §969.11. Maximum charges after negotiations

14 **R.S. 6:969.11 is all proposed new law.**

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

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

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

27 (a) Notify the consumer that the contract, note or agreement

1 was not transferred or assigned.

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

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

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

11 §969.12. Maximum charges after maturity

12 **R.S. 6:969.12 is all proposed new law.**

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

20 §969.13. Leap years

21 **R.S. 6:969.13 is all proposed new law.**

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

26 §969.14. Variable rates

27 **R.S. 6:969.14 is all proposed new law.**

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

4 §969.15. Maximum delinquency charges

5 **R.S. 6:969.15 is all proposed new law.**

6 A. The parties to a motor vehicle credit transaction may contract
7 for the payment of a delinquency charge on any installment or other
8 regular payment not paid in full within ten days after its scheduled or
9 deferred due date in an amount not exceeding the greater of:

10 (1) Five percent of the amount of the installment in default, but
11 not exceeding fifteen dollars.

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

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

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

1 current installments or other payments due and then to delinquent
2 installments or other payments and then to delinquency and other
3 charges.

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

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

15 C. If two installment payments or parts thereof of a precomputed
16 transaction are in default for ten days or more, the extender of credit
17 may, upon first giving the consumer written notice, elect to convert the
18 precomputed transaction into a simple interest transaction. The notice
19 must state the exact date on which the conversion will occur, the loan
20 finance charge or credit service charge rate to be charged under the
21 simple interest transaction, the balance due at the time of the
22 conversion, and whether or not there will be a balloon payment. In this
23 event, the extender of credit shall make a rebate pursuant to the
24 provisions on rebate upon prepayment as of the maturity date of a
25 delinquent installment or other regular payment, and thereafter may
26 make a loan finance charge or credit service charge as authorized by
27 this Part. The amount of the rebate shall not be reduced by the amount

1 of any minimum loan finance charge or minimum credit service charge
2 as provided in this Part; however, the extender of credit may deduct a
3 prepayment charge as provided in R.S. 6:969.20(A).

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

10 §969.16. Maximum deferral charges

11 **R.S. 6:969.16 is all proposed new law.**

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

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

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

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

22 §969.17. Charges for checks returned for insufficient funds

23 **R.S. 6:969.17 is all proposed new law.**

24 The parties in a motor vehicle credit transaction may contract for
25 an additional charge to be assessed if the consumer tenders a check in
26 payment and such check is returned from any bank, savings and loan
27 association, thrift institution, credit union, or any other organization or

1 institution authorized to issue checks, drafts, or similar negotiable
2 instruments, due to insufficient credit or funds in the account for
3 payment of such check in full upon its presentation. The additional
4 charge shall be five percent of the amount of the check, but in no case
5 shall this charge exceed fifteen dollars. Such charge shall be in
6 addition to any delinquency charge assessed under the provisions of
7 R.S. 6:969.15.

8 §969.18. Documentation fees; notary fees; transfer of equity and other
9 fees; disclosure

10 **R.S. 6:969.18 is all proposed new law.**

11 A. The seller or extender of credit may charge the consumer a
12 fifty dollar documentation fee for services performed in documenting
13 a motor vehicle credit transaction. The seller or extender of credit may
14 additionally charge the consumer a ten dollar convenience fee for
15 services performed in obtaining a motor vehicle license and/or title on
16 the consumer's behalf. These fees are not considered to be additional
17 loan finance charges or credit service charges under this Chapter, and
18 are non-refundable and not subject to rebate.

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

26 C. A consumer may transfer his equity in the secured motor
27 vehicle at any time to another person upon written agreement by the

1 §969.19. Right to prepay

2 **R.S. 6:969.19 is all proposed new law.**

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

13 §969.20. Rebates upon prepayment; prepayment charges

14 **R.S. 6:969.20 is all proposed new law.**

15 A. Upon prepayment in full of a precomputed transaction, the
16 extender of credit shall refund unearned precomputed loan finance
17 charges or credit service charges, and such refund shall represent at
18 least ninety percent as great a portion of the loan finance charge or
19 credit service charge, after first deducting from such precomputed
20 charge a prepayment charge of not more than twenty-five dollars, as the
21 sum of the monthly time balances beginning one month after the month
22 in which prepayment is made, bears to the sum of all the monthly time
23 balances under the schedule of payments in the contract. This method
24 of rebate upon prepayment is commonly referred to as the "Rule of
25 78's" or the "Sum of Digits" rebate method. If more than one-half of
26 the term of the precomputed transaction has elapsed, the rebate shall be
27 computed without deducting a prepayment charge. For the purposes of

1 rebate upon prepayment, deferral charges are not required to be
2 rebated. No rebate less than one dollar, or to the extent provided for by
3 federal law, is required.

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

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

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

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

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

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

25 §969.21. Rebate after acceleration of maturity

26 **R.S. 6:969.21 is all proposed new law.**

27 A. If the maturity of a precomputed transaction is accelerated

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

11 B. If the maturity of a simple interest transaction is accelerated
 12 for any reason, the extender of credit may charge the consumer a
 13 twenty-five dollar prepayment charge as provided under R.S.
 14 6:969.20(B).

15 PART IV. LIMITATIONS ON AGREEMENTS AND PRACTICES

16 **Part IV is all proposed new law.**

17 §969.22. Attorney fees

18 **R.S. 6:969.22 is all proposed new law.**

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

23 §969.23. Collection/enforcement costs and expenses

24 **R.S. 6:969.23 is all proposed new law.**

25 The consumer shall be obligated and responsible to reimburse
 26 the extender of credit for its out-of-pocket collection costs and
 27 expenses incurred in collecting the consumer's obligation and in

1 enforcing the creditor's security rights against the secured motor
2 vehicle and any other collateral. The consumer shall be further
3 obligated and responsible to reimburse the extender of credit for such
4 additional collection costs and expenses as may be authorized under
5 Chapters 3 and 9 of the Louisiana Commercial Laws (R.S. 10:3-101,
6 et seq., and 10:9-101, et seq.).

7 §969.24. Use of multiple agreements

8 **R.S. 6:969.24 is all proposed new law.**

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

12 PART V. INSURANCE

13 **Part V is all proposed new law.**

14 §969.25. Consumer credit insurance

15 **R.S. 6:969.25 is all proposed new law.**

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

27 B. Consumer credit insurance may be written with respect to

1 each individual who is an obligor or co-obligor under a motor vehicle
2 credit transaction. The amount of credit life insurance coverage on any
3 one obligor or co-obligor with respect to any one motor vehicle credit
4 transaction may not exceed the total sum payable under such contract
5 including all loan finance charges and credit service charges.
6 Additionally, the amount of credit health and accident insurance
7 coverage on any one obligor or co-obligor with respect to any one
8 motor vehicle credit transaction may not exceed the total sum payable
9 under such contract including all loan finance charges and credit
10 service charges.

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

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

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

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

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

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

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

<u>Amount per \$100.00</u>				
	<u>7-Day</u>	<u>14-Day</u>	<u>30-Day</u>	
<u>Months</u>	<u>Retro</u>	<u>Retro</u>	<u>Retro</u>	
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	

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

22 §969.26. Property insurance

23 **R.S. 6:969.26 is all proposed new law.**

24 A. An extender of credit may, in addition, request or require a
 25 consumer to insure the secured motor vehicle and its use and operation,
 26 and any additional collateral securing the transaction, and include the
 27 cost of the insurance as a separate charge in the consumer’s contract.

1 This insurance and the premiums or charges thereon shall bear a
2 reasonable relationship to the amount, term, and conditions of credit,
3 and to the existing hazards or risk of loss, damage, or destruction. This
4 insurance and the premiums or charges thereon shall also bear a
5 reasonable relationship to the value of the motor vehicle and other
6 collateral insured or to be insured, when, in the event of loss, such
7 insurance policy does not pay off the entire balance of the transaction.

8 B. Where a consumer fails to maintain required property
9 insurance or fails to provide the extender of credit with timely notice
10 of the purchase or renewal of such insurance coverage, the extender of
11 credit may, after notice to the consumer and expiration of a fifteen day
12 curative period from the mailing of said notice, purchase insurance on
13 the customer's property, including insurance protecting only the
14 creditor's interest in such property, and insurance protecting against
15 such additional risks as the creditor may determine within its sole
16 discretion. The limitations of Subsection A above does not apply under
17 such circumstances. The extender of credit shall have no contractual
18 or fiduciary duty to the consumer, and the insurance purchased need
19 not be at the best available rates. Such insurance premiums may be
20 added to the outstanding balance of the customer's contract and made
21 subject to additional loan finance charges or credit service charges at
22 the rate previously agreed to by the consumer.

23 C. Every seller or lender who obtains or provides insurance to
24 a consumer to ensure a motor vehicle subject to a motor vehicle credit
25 transaction shall inform the consumer in writing, at the time the seller
26 or lender agrees to obtain or provide insurance, as to whether or not
27 such insurance, by itself, satisfies the requirements of R.S. 32:851 et

1 seq. When the insurance, by itself, does not satisfy the requirements of
2 R.S. 32:851 et seq., the seller or lender shall advise the consumer that
3 all motorists are required by law to be covered by an automobile
4 liability policy with a legally prescribed liability limits which exceed
5 the liability limits of the policy provided, and further that failure to
6 meet those limits will subject the consumer to penalties which may
7 include the suspension or revocation of driving privileges.

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

15 §969.27. Existing insurance

16 **R.S. 6:969.27 is all proposed new law.**

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

24 §969.28. Limitations on insurance rates; contract requirements

25 **R.S. 6:969.28 is all proposed new law.**

26 Any insurance provided, sold, or obtained through an extender
27 of credit shall be written at lawful rates and in accordance with the

1 provisions of the Louisiana Insurance Code by a company authorized
2 to do business in this state which is not under a court-ordered
3 rehabilitation, conservation, liquidation, or dissolution; provided,
4 however, that such insurance may be written in accordance with R.S.
5 22:1257 through 1270 if the provisions thereof are applicable. Any
6 extender of credit which writes insurance in compliance with the
7 preceding requirements shall not be liable to any insured as a result of
8 the insurer's inability to pay any claim to an insured due to insolvency,
9 or pursuant to any court-ordered rehabilitation, conservation,
10 liquidation, or dissolution.

11 §969.29. Choice of insurer

12 **R.S. 6:969.29 is all proposed new law.**

13 The consumer shall have the privilege at the time of execution
14 of the contract of purchasing any required or requested insurance from
15 an agent or broker of his own selection and of selecting an insurance
16 company acceptable to the extender of credit but, in such cases, the
17 inclusion of the insurance premium in the contract shall be optional
18 with the extender of credit. However, any licensed admitted property
19 and casualty insurer possessing a valid certificate of authority to
20 transact property and liability insurance coverage in the state of
21 Louisiana shall be deemed to be an acceptable insurer for the
22 provisions of this Chapter. The extender of credit may refuse any
23 otherwise acceptable insurer which is under court-ordered
24 rehabilitation, conservation, liquidation, or dissolution.

25 §969.30. Conditions applying to insurance provided by the extender
26 of credit

27 **R.S. 6:969.30 is all proposed new law.**

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

8 §969.31. Cancellation of insurance; refund or credit upon cancellation

9 **R.S. 6:969.31 is all proposed new law.**

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

17 B. When insurance paid by the consumer is terminated for any
18 reason, the refund for unearned insurance premiums received by the
19 extender of credit shall, at the creditor's option, be applied toward
20 payment of the premium for insurance to replace the coverage
21 canceled, adjusted, or terminated, or toward payment of the unpaid
22 balance of the motor vehicle credit transaction. The order of applying
23 said unearned premium shall be inverse to the order in which the
24 installments of the motor vehicle credit transaction are payable
25 according to its terms, beginning with the installment due on the final
26 due dates and not to the next ensuing installment which shall remain
27 payable as originally scheduled. The remaining balance of unearned

1 insurance premiums, if any, shall be refunded to the consumer;
2 however, no cash refund shall be required if the amount thereof is less
3 than one dollar, or to the extent provided for by federal law.

4 §969.32. Gain from insurance

5 **R.S. 6:969.32 is all proposed new law.**

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

11 PART VI. VIOLATIONS

12 **Part VI is all proposed new law.**

13 §969.33. Effect of violations on rights of parties

14 **R.S. 6:969.33 is all proposed new law.**

15 A. Violations discovered as a result of written consumer
16 complaint.

17 (1) Intentional violations or violations not caused by good faith
18 errors.

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

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

1 (i) The affected consumer, individually and not in a
2 representative capacity, delivers written notice to the extender of credit
3 by certified mail addressed to the extender of credit's place of business
4 in which the motor vehicle credit transaction arose.

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

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

9 (c) Except as otherwise provided herein, if the notices provided
10 for in Subsection A(1)(b) of this Section have been given by the
11 consumer, the extender of credit shall be presumed to have committed
12 an intentional violation or a violation not resulting from good faith
13 error if the extension of credit fails to return or give credit for an
14 overcharge in the loan finance charge or credit service charge or, fails
15 to return a deficiency in the rebate with the time period set forth in
16 Subsection A(1)(b)(iii) of this Section, provided that such overcharge
17 or deficiency exceeds the greater of (1) ten percent of such loan finance
18 charge, credit service charge, or rebate, or (2) fifteen dollars.

19 (d) If the extender of credit fails to return or give credit for an
20 overcharge or deficiency as provided in Subsection A(1)(c) of this
21 Section, in addition to the penalties in Subsection A(1)(a) of this
22 Section, the consumer executing the motor vehicle credit transaction
23 and giving the required notices shall be entitled to collect from the
24 extender of credit up to one hundred dollars of his actual documented
25 out-of-pocket expenses incurred as a direct result of such failure to act.

26 (e) In the case of multiple violations involving an overcharge in
27 the loan finance charge, credit service charge, or rebate of the size

1 described in Subsection A(1)(c) of this Section, the extender of credit
2 must notify the commission of the existence of such multiple violation
3 and must give the commission a reasonable description of such multiple
4 violation within thirty days after the receipt of the written notice from
5 the complaining consumer, and the extender of credit must correct such
6 multiple violation as to each consumer affected thereby within thirty
7 days of the receipt of the written notice from the complaining
8 consumer. Upon good cause shown, the commission may grant up to
9 two thirty day extensions within which the extender of credit must
10 correct the violation. If the extender of credit fails to give the
11 commission the required notice or fails to correct such multiple
12 violation as required herein, then from such failure it shall be presumed
13 that such multiple violation was intentional or not in good faith.

14 (2) Unintentional violations or violations caused by good faith
15 errors.

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

21 (b) If a complaining consumer gives the extender of credit the
22 written notice required by Subsections A(1)(b)(i) and A(1)(b)(ii) of this
23 Section of an alleged violation of the provisions of this Chapter,
24 although such violation was unintentional or resulted from good faith
25 error or did not in fact exist, the extender of credit must give the
26 complaining consumer a reasonable response to the complaint in
27 writing within thirty days of the receipt of written notice from the

1 individual complaining consumer. If the extender of credit fails to give
2 such response timely, the complaining consumer shall be entitled to
3 collect from the extender of credit up to one hundred dollars of his
4 actual documented out-of-pocket expenses incurred as a direct result of
5 the failure of the extender of credit to comply with the provisions
6 hereof.

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

19 C.(1) Except as otherwise provided herein, any written notice
20 required in this Section may be mailed by registered, certified, first
21 class, or air mail at the sender's option. Proof of receipt by the extender
22 of credit may consist of a return receipt executed by an employee of the
23 extender of credit. Proof of receipt by the consumer may be a return
24 receipt executed by the consumer. Proof of mailing any written notice
25 may be a postmarked registered mail receipt, a postmarked certified
26 mail receipt, or a post office certificate of mailing. Each written notice
27 required by Subsection A(1)(b) of this Section shall identify the

1 individual contract at issue, the name of the extender of credit and the
2 name of the individual consumer, and shall include the date and a
3 reasonable description of the alleged violation.

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

9 D. Any civil action under this Section must be brought within
10 one year of the date of the violation. Civil actions under this Chapter
11 are not subject to class action adjudication. Motor vehicle credit
12 contracts may include compulsory arbitration clauses.

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

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

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

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

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

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

27 §969.34. Guidance by commission; advisory opinions

1 **R.S. 6:969.34 is all proposed new law.**

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

11 PART VIII. LICENSING PROVISIONS

12 §969.35. Authority to make consumer loans; assignees

13 **R.S. 6:969.35 is all proposed new law.**

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

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

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

1 D. Any person violating this Section may be fined one thousand
2 dollars for each contract originated or purchased without that person
3 being properly licensed. The fine shall be payable to the commission.
4 §969.36. License not required

5 **R.S. 6:969.36 is all proposed new law.**

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

8 (1) Supervised financial organizations.

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

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

13 (4) Governmental agencies, instrumentalities, or public entities
14 organized by act of congress or the Legislature of Louisiana.

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

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

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

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

26 B. The commission is authorized to waive the licensing and
27 examination requirements for a subsidiary of an entity as described in

1 Subsection (A)(1) of this Section.

2 §969.37. Licensing procedures.

3 **R.S. 6:969.37 is all proposed new law.**

4 A. The application for a license under this Chapter shall be in
5 writing, under oath, and in the form prescribed by the commission.
6 The application shall contain the name of the applicant; date of
7 incorporation, if incorporated; the address where the business is to be
8 conducted and similar information as to any branch office of the
9 applicant in this state; the name and resident address of the owner or
10 partners or, if a corporation or association, of the directors, trustees and
11 principal officers, and such other pertinent information as the
12 commission may require.

13 B. The license fee for every licensed lender for each calendar
14 year or part thereof shall be the sum of two hundred dollars for the
15 principle place of business of the licensee, and the sum of two hundred
16 dollars for each branch of the licensee maintained in this state. If a
17 lender makes direct consumer loans to consumers at a seller location,
18 that location is not deemed to be a branch office of the lender.

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

25 D. Each license shall specify the location of the licensee's
26 office or branch, and if that office or branch is located within this state,
27 the license must be conspicuously displayed there. In case such

1 location be changed, the commission shall endorse the change of
2 location on the license without charge.

3 E. Upon the filing of such application and the payment of such
4 fee, the commission shall issue a license to the applicant to engage in
5 the origination of consumer loans or the purchase of motor vehicle
6 credit contracts, notes and agreements by assignment under and in
7 accordance with the provisions of this Chapter, for a period which shall
8 expire the last day of December following the date of issuance. Such
9 license shall not be transferrable or assignable. No licensee shall
10 transact any business provided for by this Chapter under any other
11 name.

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

18 §969.38. Denial, suspension or revocation of licenses

19 **R.S. 6:969.38 is all proposed new law.**

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

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

24 (2) Failure to comply with any provision of this Chapter relating
25 to motor vehicle credit transactions.

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

1 (4) Fraudulent misrepresentation, circumvention or concealment
2 by the licensee through whatever subterfuge or device of any of the
3 material particulars or the nature thereof required to be stated or
4 furnished to the purchasing consumer under this Chapter.

5 B. If the licensee is a firm, association or corporation, it shall
6 be sufficient cause for the suspension or revocation of license that any
7 officer, director or trustee of the licensee has so acted or failed to act
8 as would cause for suspending or revoking a license to such party as an
9 individual. Each licensee shall be responsible for the acts of any and
10 all of its employees while acting as its agent, if such licensee after
11 actual knowledge of said acts retain the benefits, proceeds, profits or
12 advantages accruing from said acts or otherwise ratified said acts.

13 C. No license shall be denied, suspended or revoked except
14 after hearing thereon. The commission shall give the licensee at least
15 thirty days written notice, in the form of an order to show cause, of the
16 time and place of such hearing by certified mail addressed to the
17 principle place of business in the state of such licensee. The said notice
18 shall contain the grounds of complaint against the licensee. Any order
19 suspending or revoking such license shall recite the grounds upon
20 which the same is based. The order shall be entered upon the records
21 of the commission and shall not be effective until after thirty days
22 written notice thereof given after such entry forwarded by registered
23 mail to the licensee at such principle place of business. No revocation,
24 suspension or surrender of any license shall impair or affect the
25 obligation under any motor vehicle credit contract or agreement entered
26 into or acquired previously thereto by the licensee.

27 D. Within thirty days after such denial, suspension or

1 revocation of a license, the licensee may apply for a review thereof by
2 application to the district court for the parish of Jefferson in accordance
3 with the Administrative Procedure Act.

4 §969.39. Investigations and complaints

5 **R.S. 6:969.39 is all proposed new law.**

6 A. The commission, if it has reason to believe that any licensee,
7 or any other person, has violated any of the provisions of this Chapter
8 relating to motor vehicle credit transactions shall have the power to
9 make such investigations as it shall deem necessary and, to the extent
10 necessary for this purpose, the commission may examine such licensee
11 or any other person and shall have the power to compel the production
12 of all relevant books, records, accounts and documents.

13 B. Any consumer having reason to believe that this Chapter
14 relating to the consumer's motor vehicle credit transaction has been
15 violated may file with the commission a written complaint setting forth
16 the details of such alleged violation, and the commission, upon receipt
17 of such complaint, may inspect the pertinent books, records, letters of
18 the lessee and of the consumer involved, relating to such specific
19 written complaint.

20 §969.40. Powers of commission.

21 **R.S. 6:969.40 is all proposed new law.**

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

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

12 C. If any person served with any such subpoena shall refuse to
13 obey the same and to give testimony, and to produce evidence as
14 required thereby, the commissioner may apply to any judge of the
15 district court for an attachment against such person, as for a contempt.
16 The judge, upon satisfactory proof of such refusal, shall issue an
17 attachment, directed to any sheriff, constable or police officer, for the
18 arrest of such person, and upon his being brought before such judge,
19 proceed to a hearing of the case. The judge shall have the power to
20 enforce obedience to such subpoena, and the answering of any
21 question, and the production of any evidence, that may be proper, by
22 a fine, not exceeding one hundred dollars, or by imprisonment, or by
23 both fine and imprisonment, and to compel such witness to pay the
24 costs of such proceeding to be taxed.

25 D. The commission is hereby vested with the powers and duties
26 necessary and proper to enable it to fully and effectively carry out the
27 provisions and objects of this Chapter, including without limitation, the

1 imposition of fines and penalties against persons violating this Chapter,
2 and is hereby authorized and empowered to make and enforce all
3 reasonable rules and regulations and to adopt and prescribe all forms
4 necessary to accomplish said purpose, and the enumeration of any
5 power or authority herein shall not be construed to deny, impair,
6 disparage or limit any others necessary to the attainment thereof. A
7 copy of all rules and regulations adopted by the commission shall be
8 filed and recorded in the office of the secretary of state, and same may
9 be amended, modified or repealed from time to time.

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

16 §969.41. Penalties imposed by the commission

17 **R.S. 6:969.41 is all proposed new law.**

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

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

27 C. Any person who is required to be licensed under this

1 Chapter, and who fails to timely purchase a license as herein provided,
 2 may be ordered by the commission to pay a penalty of one hundred
 3 dollars in addition to the regular license fee herein provided.

4 Section 2. Chapter 10 of Title 6 of the Louisiana Revised Statutes,
 5 comprised of R.S. 6:951 through 964, is hereby repealed.

6 Section 3. This Act shall become effective upon signature by the
 7 governor or, if not signed by the governor, upon expiration of the time for bills
 8 to become law without signature by the governor, as provided by Article III,
 9 Section 18 of the Constitution of Louisiana. If vetoed by the governor and
 10 subsequently approved by the legislature, this Act shall become effective on
 11 the day following such approval.

The form of the original instrument and the following digest,
 which constitutes no part of the legislative instrument, were
 prepared by C. Kevin Hayes.

Heitmeier (SB 921)

DIGEST

Proposed law enacts the Louisiana Motor Vehicle Sales Finance Act.

Proposed law provides that the parties to a motor vehicle credit transaction may agree that the law of the place where the motor vehicle transaction was entered into or the law of another state shall apply.

Proposed law 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.

Proposed 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.

Proposed law 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.

Proposed 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.

Proposed law 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.

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

Proposed law 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.

Proposed law 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 proposed law or the Louisiana Consumer Credit Law.

Proposed 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.

Proposed law 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.

Proposed law 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.

Proposed law 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 proposed law.

Proposed 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law provides the effect of leap year may be disregarded.

Proposed law allows an extender of credit to enter into variable rate motor vehicle transactions.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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 proposed law.

Proposed 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law provides the seller or extender of credit may charge the consumer a documentation fee of \$50 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.

Proposed law allows the seller or extender of credit to charge the consumer a notary fee of \$15 per single transaction.

Proposed law 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.

Proposed law 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.

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

Proposed law 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.

Proposed law allows the consumer to prepay in full the unpaid balance at any time.

Proposed law 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.

Proposed law allows an extender of credit to charge a \$25 prepayment charge to the consumer upon prepayment in full of a simple interest transaction.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law provides 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 and a 15 day curative period, purchase insurance on the customer's property and add the insurance premiums to the outstanding balance of the contract.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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 3 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.

Proposed law 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 proposed 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.

Proposed law 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.

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

Proposed law requires any civil action to be brought within 1 year of the date of violation.

Proposed law provides attorney fees are to be computed based on time reasonably expended and not on contingency.

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

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law 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.

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

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

Proposed law provides for a license fee of \$200 per calendar year for the principle place of business and \$200 for each additional branch of the licensee maintained in Louisiana.

Proposed law provides license fees shall be in addition to other fees and taxes paid by the licensee.

Proposed law 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.

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

Proposed law 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 proposed 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.

Proposed law provides that the licensee shall be responsible for the acts of its agents.

Proposed law requires a hearing prior to the denial, suspension or revocation of a license.

Proposed law 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.

Proposed law gives the commission the powers to investigate and subpoena when it has reason to believe a provision of proposed law has been violated.

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

Proposed law 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.

Proposed law 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.

Proposed law 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.

Proposed law provides the commission is vested with the powers and duties necessary to effectively carry out the provisions and objects of proposed law.

Proposed law provides a per diem of \$50 per day and reimbursement for actual expenses to the commission members and the chairman.

Proposed law provides the commission may issue a fine not to exceed \$5,000 per violation for willful violation of proposed law.

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

Proposed law 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.

Proposed law repeals R.S. 6:951 - 964.

Effective upon signature of the governor or lapse of time for gubernatorial

action.

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

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce and Consumer Protection to the original bill.

1. Changes the retroactive effect to prospective only and applies to transactions consummated on or after July 1, 1999 instead of transactions consummated on or after July 1, 1986.