



## **New Mexico Motor Vehicle Sales Finance Act**

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### **58-19-1. Short Title**

[Chapter 58, Article 19](#) NMSA 1978 may be cited as the "Motor Vehicle Sales Finance Act".

**History:** 1953 Comp., § 50-15-1, enacted by Laws 1959, ch. 204, § 1; 2001, ch. 123, § 1.

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### **58-19-2. Definitions**

As used in the Motor Vehicle Sales Finance Act [[58-19-1](#) NMSA 1978]:

A. "motor vehicles" means automobiles, recreational vehicles, recreational travel trailers, trailers, motorcycles, trucks, semi-trailers, truck tractors and buses designed and used primarily to transport persons or property on a public highway, farm machinery and all vehicles new or used, with any power other than muscular power except boat trailers, aircraft or any vehicle that runs only on rails or tracks, but does not include any motor vehicle having a gross vehicle weight of ten thousand pounds or more purchased primarily for business or commercial purposes;

B. "retail buyer" or "buyer" means a person who buys a motor vehicle primarily for personal, family or household purposes from a retail seller and who executes a retail installment contract in connection therewith;

C. "retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer or subject to a retail installment contract;

D. "holder" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee;

E. "retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, official fees and the finance charge together constitute the time price;

F. "retail installment contract" or "contract" means an agreement, entered into in this state or made subject to the laws of this state, pursuant to which the title to or a lien upon the motor vehicle that is the subject matter of a retail installment transaction is retained or taken by a retail seller from a retail buyer as security for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become or has the option of becoming the owner of the motor vehicle upon full compliance with the provisions of the contract;

G. "cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle that is the subject matter of the retail installment contract, if the sale had been a sale for cash instead of a retail installment transaction. Cash sale price may include any taxes, registration fee, certificate of title fee, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle;

H. "official fees" means the fee prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract;

I. "finance charge" means the amount agreed upon between the buyer and the seller to be added to the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees, in determining the time price;

J. "person" means an individual, partnership, corporation, association and any other group however organized;

K. "sales finance company" means a person engaged in whole or in part in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, small loan licensee, industrial bank or investment company, if so engaged; the term also includes a retail seller engaged in whole or in part in the business of creating and holding retail installment contracts that exceed a total aggregate outstanding indebtedness of one hundred thousand dollars (\$100,000);

L. "director" means the director of the financial institutions division of the regulation and licensing department; and

M. "year" means a period of three hundred sixty-five days; "month" means one-twelfth of a year; and "day" means one three-hundred-sixty-fifth of a year.

**History:** 1953 Comp., § 50-15-2, enacted by Laws 1959, ch. 204, § 2; 1975, ch. 274, § 1; 1979, ch. 388, § 1; 1983, ch. 10, § 1; 1983, ch. 315, § 3; 1984, ch. 16, § 1; 2001, ch. 123, § 2.

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**58-19-3. Licensing of sales finance companies required; denial of license; provision for out-of-state licenses.**

A. No person shall engage in the business of a sales finance company in this state without a license therefor as provided in the Motor Vehicle Sales Finance Act [58-19-1 NMSA 1978]; provided, however, that a state or national bank authorized to do business in this state shall not be required to obtain a license under that act but shall comply with all of its other provisions.

B. The application for a license shall be in writing, under oath and in the form prescribed by the director. The application shall contain the name of the applicant; date of incorporation, if incorporated; the address where the business is or is to be conducted and similar information as to any branch office of the applicant; the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; and such other pertinent information as the director may require.

C. The license fee for each calendar year or part thereof shall be four hundred dollars (\$400) for the principal place of business of the licensee and four hundred dollars (\$400) for each branch of the licensee maintained in this state. For a license maintained out of this state, the license fee shall be five hundred dollars (\$500) for each office. All fees shall be deposited with the state treasurer for deposit and transfer as provided in [Section 9-16-14](#) NMSA 1978.

D. Each license shall specify the location of the office or branch, and the license shall be conspicuously displayed in the office or branch. In case a location is changed, the director shall endorse the change of location on the license upon payment to the director by the licensee of a duplicate license fee of twenty-five dollars (\$25.00).

E. Upon the filing of an application and the payment of the fee, the director shall issue to the applicant a license to engage in the business of a sales finance company under and in accordance with the provisions of the Motor Vehicle Sales Finance Act for a period which shall expire on December 31 next following the date of its issuance. The license shall not be transferable or assignable. No licensee shall transact any business provided for by the Motor Vehicle Sales Finance Act under any other name.

F. The director shall deny a license under the Motor Vehicle Sales Finance Act if he finds that:

- (1) the applicant has failed to pay the required fee;
- (2) the applicant has willfully furnished the director with false or misleading information in the application; or
- (3) there is reason to believe that the financial responsibility, character and general fitness of the applicant for an original license and of the individual members and beneficiaries thereof, if the applicant is a copartnership, association or trust, and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the business will not be operated lawfully, honestly, fairly and efficiently within the declared purposes and spirit of that act.

If an original license is denied by the director, he shall immediately notify the applicant in writing setting forth the reasons for denial.

G. The director may issue a motor vehicle sales finance company license to an applicant who applies for such a license to be located outside the state, if the applicant:

- (1) files an application on a form prescribed by the director enclosing a license fee of five hundred dollars (\$500);
- (2) maintains, at all times, an agent for service of process, who shall be a resident of New Mexico; and
- (3) complies with all sections of the Motor Vehicle Sales Finance Act and any rules and regulations that may be promulgated by the director and complies with all statutes relating to money, interest and usury which are applicable to motor vehicle sales finance companies.

A motor vehicle sales finance company license may be granted to an applicant anywhere in the United States. Local situs is not a requirement for the granting of a license to an out-of-state applicant.

**History:** 1953 Comp., § 50-15-3, enacted by Laws 1959, ch. 204, § 3; 1979, ch. 388, § 2; 1987, ch. 292, § 6; 1987, ch. 298, § 6; 1989, ch. 209, § 11.

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#### **58-19-4. Suspension or revocation of licenses; renewal license denied; appeals**

A. Renewal of a license originally granted under the Motor Vehicle Sales Finance Act [[58-19-1](#) NMSA 1978] may be denied or a license may be suspended or revoked by the director on any of the following grounds:

- (1) material misstatement in application for license;
- (2) willful failure to comply with any provision of that act relating to retail installment contracts;
- (3) defrauding any retail buyer to the buyer's detriment while a licensee under that act;
- (4) fraudulent misrepresentation, circumvention or concealment by the licensee through whatever subterfuge or device of any of the material particulars required to be stated or furnished to the retail buyer under that act; or
- (5) during the course of examination, the licensee intentionally furnished the examiner or duly authorized representative with false or misleading information so as to prevent discovery of apparent violations of that act.

B. If a licensee is a firm, association or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director or trustee of a licensed firm, association or corporation, or any member of a licensed partnership, has acted or failed to act in the conduct of the business under its license as would be cause for suspending or revoking a license to the person as an individual. Each licensee shall be responsible for the acts of any of its employees while acting as its agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits or advantages accruing from the acts or otherwise ratified the acts.

C. No license shall be denied, suspended or revoked except after hearing. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the principal place of business. The notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking a license shall recite the grounds upon which the order is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof, given after the entry, forwarded by certified mail to the licensee at his principal place of business. No revocation, suspension or surrender of any license shall impair or affect the obligation of any lawful retail installment contract acquired previously by the licensee.

D. A person aggrieved by the denial, suspension or revocation of a license may file an appeal to the district court pursuant to the provisions of [Section 39-3-1.1](#) NMSA 1978.

E. The director shall publish a notice that a license has been revoked or suspended within thirty days after the revocation or suspension in a newspaper of general circulation in the county in which the licensee was doing business.

**History:** 1953 Comp., § 50-15-4, enacted by Laws 1959, ch. 204, § 4; 1979, ch. 388, § 3; 1998, ch. 55, § 58; 1999, ch. 265, § 62.

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#### **58-19-5. Investigations; complaints; examinations; fees**

A. The director has the power to make such investigations as he deems necessary and, to the extent necessary for this purpose, may examine any licensee or any other person and has the power to compel the production of all relevant books, records, accounts and documents.

B. Any retail buyer having reason to believe that the Motor Vehicle Sales Finance Act [[58-19-1](#) NMSA 1978] relating to his retail installment contract has been violated may file with the director a written complaint setting forth the details of the alleged violation; and the director, upon receipt of the complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved.

C. As a fee for conducting any examination or investigation pursuant to this section, a sales finance company shall pay to the director the costs of such examination or investigation, as determined by the director.

**History:** 1953 Comp., § 50-15-5, enacted by Laws 1959, ch. 204, § 5; 1979, ch. 388, § 4; 1987, ch. 292, § 7.

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### **58-19-6. Powers of the Director**

The director shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter over which he has jurisdiction, control or supervision pursuant to the provisions of the Motor Vehicle Sales Finance Act [[58-19-1](#) NMSA 1978]. The director shall have the power to administer oaths and affirmations to any person whose testimony is required.

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

If any person served with a subpoena shall refuse to obey the same, to give testimony or to produce evidence as required thereby, the director may apply to any judge of the court issuing such subpoena for an attachment against such person, as for a contempt. The judge, upon satisfactory proof of such refusal, shall issue an attachment, directed to any sheriff, constable or police officer for the arrest of such person, and upon his being brought before such judge, proceed to a hearing of the case. The judge shall have power to enforce obedience to such subpoena, the answering of any question and the production of any evidence, that may be proper by a fine, not exceeding three hundred dollars (\$300), or by imprisonment in the county jail, or by both fine and imprisonment, and to tax such witness with the costs of such proceeding.

**History:** 1953 Comp., § 50-15-6, enacted by Laws 1959, ch. 204, § 6; 1979, ch. 388, § 5.

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### **58-19-7. Retail installment contracts; requirements; prohibitions**

A. A retail installment contract shall be in writing and shall be signed by both the buyer and the seller; it shall be completed as to all essential provisions prior to its signing by the buyer.

B. The printed portion of the contract, other than instructions for completion, shall be in at least eight-point type. The contract shall contain in a size equal to at least ten-point bold type the following notice: "Notice to the Buyer: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign."

C. The seller shall deliver to the buyer or mail to the buyer at the buyer's address shown on the contract a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind the buyer's agreement and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract; if such goods cannot be returned, the value thereof shall be paid by the seller. Any acknowledgment by the buyer or delivery of a copy of the contract shall be

in a size equal to at least ten-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

D. Any such agreement shall contain immediately before the buyer's signature substantially the following notice printed or typed in a size equal to at least twelve-point bold type as follows:

**"NOTICE TO BUYER**

**LIABILITY INSURANCE FOR BODILY INJURY CAUSED TO YOURSELF OR TO OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED WITH THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE COVERAGE, YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF YOUR CHOICE."**

E. The contract shall contain the following items:

- (1) the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle, including its make, year model, model and identification numbers or marks;
- (2) the cash sale price of the motor vehicle;
- (3) the amount of the buyer's down payment and whether made in money or goods;
- (4) the difference between items in Paragraphs (2) and (3) of this subsection;
- (5) the amount, if any, included for insurance and other benefits, specifying the types of coverage and benefits, and if it is the case, including as a benefit amounts paid or to be paid by the seller pursuant to agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;
- (6) the amount of official fees;
- (7) the principal balance, which is the sum of items in Paragraphs (4), (5) and (6) of this subsection;
- (8) the amount of the finance charge; and
- (9) the time balance, which is the sum of items in Paragraphs (7) and (8) of this subsection, payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or term thereof.

The above items need not be stated in the sequence or order set forth, and additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

F. The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the office of superintendent of insurance. If dual interest insurance on the motor vehicle is purchased by the holder, it shall, within thirty days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms,

exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of the buyer's own selection and of selecting an insurance company acceptable to the holder, and in such case, the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

G. If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

H. The holder may, if the contract or refinancing agreement so provides, collect a delinquency and collection charge on each installment in default for a period not less than ten days, in an amount not in excess of five percent of each installment or fifteen dollars (\$15.00), whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of attorney fees not exceeding fifteen percent of the amount due and payable under such contract, where such contract is referred for collection to any attorney not a salaried employee of the holder of the contract, plus the court costs.

I. A buyer may transfer the buyer's equity in the motor vehicle at any time to another person upon agreement by the holder, but in such event, the holder of the contract shall be entitled to a transfer of equity fee, which shall not exceed twenty-five dollars (\$25.00).

J. No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after execution, except that if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgement, conforming to the requirements of Subsection C of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as herein provided and of compliance with this section in any action or proceeding by or against the holder of the contract.

K. Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments made and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

L. No provision in a retail installment contract relieving the seller from liability under any legal remedies that the buyer may have against the seller under the contract, or any separate instrument of similar import executed in connection therewith, shall be enforceable.

M. In the event that the seller or the holder of the retail installment contract repossesses a motor vehicle, the buyer shall be responsible and liable for any deficiency in accordance with Section [55-9-608](#) NMSA 1978.

**History:** 1953 Comp., § 50-15-7, enacted by Laws 1959, ch. 204, § 7; 1973, ch. 243, § 1; 1975, ch. 256, § 1; 1975, ch. 274, § 2; 1977, ch. 272, § 2; 1979, ch. 188, § 1; 1981, ch. 10, § 2; 1989, ch. 266, § 1; 2001, ch. 123, § 3; 2013, ch. 74, § 7.

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#### **58-19-9. Credit upon anticipation of payments**

Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may pay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments. The amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances, beginning one month after prepayment is made, bears to the sum of all the monthly time balances under the schedule of payments in the contract (commonly referred to as the rule of 78S [78's]). If the charge as so computed is less than twenty-five dollars (\$25.00), then a maximum charge of twenty-five dollars (\$25.00) and no more may be retained. Where the amount of credit is less than one dollar (\$1.00), no refund need be made.

**History:** 1953 Comp., § 50-15-9, enacted by Laws 1959, ch. 204, § 9.

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#### **58-19-10. Refinancing retail installment contract.**

The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or defer payment or renew or restate the unpaid time balance of such contract, the amount of the installments and the time schedule therefor and may collect for such extension, deferment, renewal or restatement a refinance charge computed at the discretion of the holder, under either of the following optional methods of computation at the rates indicated as follows:

OPTION 1. In the event one or more installments are extended, deferred or restated, the holder may compute an extension charge on the amount of the installment payment or payments or part thereof which is extended, for the period of time for which each payment, or part thereof is extended, deferred or restated, at the following rates on contracts originally in the respective classification of motor vehicles set forth in Section 8A of this act:

Class 1	1 percent per month
Class 2	1 1/2 percent per month
Class 3 and 4	2 percent per month

Such extension charges may be computed on the basis of a full month for any fractional month period in excess of ten days.

OPTION 2. In the event the unpaid time balance of the contract is extended, deferred, renewed or restated, the holder may compute a refinance charge on such amount by adding to the unpaid time balance the cost for insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, and deducting any refund which may be due the buyer by prepayment pursuant to Section 9 [58-19-9 NMSA 1978] of the Motor Vehicle Sales Finance Act, at the rate of the finance charge specified in Section 8A of this act and by reclassifying the motor vehicle by its then year model, for the term of the refinancing agreement, but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act governing minimum finance charges and acquisition costs under the refund schedule shall not apply in calculating refinance charges on the contract renewed under this method of computation.

**History:** 1953 Comp., § 50-15-10, enacted by Laws 1959, ch. 204, § 10.

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**58-19-10.1. Loan to refinance motor vehicle sale.**

Any transaction in the form of a loan, other than a retail installment contract, is not subject to the provisions of the Motor Vehicle Sales Finance Act [58-19-1 NMSA 1978], even though all or a portion of the proceeds of such transaction in the form of a loan are applied to the unpaid balance of a retail installment contract.

**History:** 1978 Comp., § 58-19-10.1, enacted by Laws 1981, ch. 182, § 1.

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**58-19-11. Penalty.**

A. Any person who shall willfully violate any provision of the Motor Vehicle Sales Finance Act [58-19-1 NMSA 1978], or engage in the business of a sales finance company in this state without a license therefor as provided in this act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).

B. A willful violation of any of the provisions of Section 7 [58-19-7 NMSA 1978] or 8 of this act by any person or individual shall bar recovery of the finance charge, delinquency and collection or other charges whatsoever by the owner or holder of the retail installment contract involved.

**History:** 1953 Comp., § 50-15-11, enacted by Laws 1959, ch. 204, § 11.

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**58-19-12. Waiver.**

Any waiver of the provisions of this act shall be unenforceable and void.

**History:** 1953 Comp., § 50-15-12, enacted by Laws 1959, ch. 204, § 12.

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**58-19-13. Creditor compliance with federal regulation deemed compliance with this act.**

Any creditor engaging in transactions subject to the provisions of the Motor Vehicle Sales Finance Act [[58-19-1](#) NMSA 1978] who complies with the provisions of 15 United States Code Sections 1601 through 1665, and the regulations promulgated pursuant thereto, shall be deemed to have complied with applicable disclosure provisions of the Motor Vehicle Sales Finance Act.

**History:** 1953 Comp., § 50-15-13, enacted by Laws 1975, ch. 274, § 3.

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**58-19-14. Validity of assignment of contracts.**

Any sales finance company may purchase or acquire, or agree to purchase or acquire, from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment thereunder made by the buyer to the last known holder of such contract shall be binding upon all subsequent holders.

**History:** 1978 Comp., § 58-19-14, enacted by Laws 1983, ch. 99, § 1.