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SENATE BILL 354

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN D. ALTAMIRANO

AN ACT

RELATING TO COMMERCIAL TRANSACTIONS; INCREASING THE AMOUNT OF DELINQUENCY CHARGES AUTHORIZED PURSUANT TO RETAIL INSTALLMENT CONTRACTS; AUTHORIZING THE IMPOSITION OF DELINQUENCY CHARGES PURSUANT TO RETAIL CHARGE AGREEMENTS; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 56-1-2 NMSA 1978 (being Laws 1965, Chapter 258, Section 2, as amended) is amended to read:

"56-1-2. RETAIL INSTALLMENT CONTRACTS--CONSOLIDATION-- FIRST BOUGHT, FIRST PAID. --

A. Each retail installment contract shall be in writing, dated, signed by the retail buyer and completed as to all essential provisions except as otherwise provided in Subsections G and H of this section.

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[bracketed material] = delete

1 B. The printed or typed portion of the contract,
2 other than instructions for completion, shall be in a size equal
3 to at least eight-point type. The contract shall be designated
4 "retail installment contract" and shall contain substantially
5 the following notice printed or typed in a size equal to at
6 least ten-point bold type:

7 "NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU
8 READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED
9 TO A COPY OF THE CONTRACT YOU SIGN. "

10 C. The retail seller shall deliver to the retail
11 buyer or mail to him at his address shown on the retail
12 installment contract a copy of the contract as accepted by the
13 seller. Until the seller does so, a buyer who has not received
14 delivery of the goods or been furnished or rendered the services
15 shall have the right to rescind his contract and to receive a
16 refund of all payments made and return of all goods traded in to
17 the seller on account of or in contemplation of the contract or,
18 if such goods cannot be returned, the value thereof. Any
19 acknowledgment by the buyer of delivery of a copy of the
20 contract shall be in a size equal to at least ten-point bold
21 type and, if contained in the contract, shall appear directly
22 above the buyer's signature.

23 D. The retail installment contract shall contain the
24 names of the seller and the buyer, the place of business of the
25 seller, the residence or other address of the buyer as specified

1 by the buyer and a description or identification of the goods
2 sold or to be sold or services furnished or rendered or to be
3 furnished or rendered.

4 E. The retail installment contract shall contain the
5 following items:

6 (1) the cash sale price of the goods or
7 services;

8 (2) the amount of the buyer's down payment,
9 identifying the amounts paid in money and allowed for goods
10 traded in;

11 (3) the difference between the items listed in
12 Paragraphs (1) and (2) of this subsection;

13 (4) the aggregate amount, if any, included for
14 insurance, if a separate identified charge is made therefor,
15 specifying the [~~type or~~] types of insurance and the [~~term or~~]
16 terms of coverage;

17 (5) the aggregate amount of official fees;

18 (6) the principal balance, which is the sum of
19 the items listed in Paragraphs (3), (4) and (5) of this
20 subsection;

21 (7) the amount or rate of the time price
22 differential;

23 (8) the amount of the time balance owed by the
24 buyer to the seller, which is the sum of the items listed in
25 Paragraph (6) of this subsection and the amount set out under

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[bracketed material] = delete

1 ~~[item]~~ Paragraph (7) of this subsection;

2 (9) except as otherwise provided in ~~[the next~~
3 ~~two sentences]~~ this paragraph, the maximum number of installment
4 payments required and the amount of each installment and the due
5 date of each payment necessary to pay the time balance set forth
6 in ~~[item]~~ Paragraph (8) of this subsection. If installment
7 payments other than the final payment are stated as a series of
8 equal scheduled amounts and if the amount of the final
9 installment payment does not substantially exceed the scheduled
10 amount of each preceding installment payment, the maximum number
11 of payments and the amount and due date of each payment need not
12 be separately stated, and the amount of the scheduled final
13 installment payment may be stated as the remaining unpaid
14 balance. The due date of the first installment payment may be
15 fixed by a day or date or may be fixed by reference to the date
16 of the contract or to the time of delivery or installation;

17 (10) the time sale price; and

18 (11) if any installment, except the down payment,
19 is more than double the average of all other installments,
20 except the down payment, the following legend printed in at
21 least ten point bold type or typewritten: "THIS CONTRACT IS NOT
22 PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS" followed, if there ~~[be~~
23 ~~but]~~ is only one ~~[such]~~ larger installment, by: "AN INSTALLMENT
24 OF \$ _____ WILL BE DUE ON _____." or, if
25 there ~~[be]~~ is more than one ~~[such]~~ larger installment, by:

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1 "LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: _____.",
2 in [~~such~~] the latter case, inserting the amount of every [~~such~~]
3 larger installment and of its due date.

4 The [~~above~~] items set forth in this subsection need not be
5 stated in the sequence or order set forth above; additional
6 items may be included to explain the computations made in
7 determining the amount to be paid by the buyer.

8 F. A retail installment contract need not be contained
9 in a single document. If the contract is contained in more than
10 one document, one such document may be an original document
11 signed by the retail buyer, stated to be applicable to purchases
12 of goods or services to be made by the retail buyer from time to
13 time. In such case, [~~such~~] the document, together with the
14 sales slip, account book or other written statement relating to
15 each purchase, shall set forth all of the information required
16 by this section and shall constitute the retail installment
17 contract for each purchase. On each succeeding purchase
18 pursuant to [~~such~~] the original document, the sales slip,
19 account book or other written statement may at the option of the
20 seller constitute the memorandum required by Subsection M of
21 this section.

22 G. Retail installment contracts negotiated and entered
23 into by mail without personal solicitations by salesmen or other
24 representatives of the seller and based upon a catalog of the
25 seller, or other printed solicitation which clearly sets forth

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1 the cash sale prices and other terms of sales to be made through
2 such medium, may be made as provided in this subsection. The
3 provisions of [~~this act~~] Chapter 56, Article 1 NMSA 1978 with
4 respect to retail installment contracts shall be applicable to
5 such sales, except that:

6 (1) the designation and notice provisions of
7 Subsection B of this section shall not be applicable to such
8 contract; and

9 (2) the retail installment contract, when
10 completed by the buyer, need not contain the items required by
11 Subsection E of this section.

12 When the contract is received from the retail buyer, the
13 seller shall prepare a written memorandum containing all of the
14 information required by Subsection E of this section to be
15 included in a retail installment contract. In lieu of
16 delivering a copy of the contract to the retail buyer as
17 provided in Subsection C of this section, the seller shall
18 deliver to the buyer a copy of such memorandum prior to the due
19 date of the first installment payable under the contract.

20 H. A retail installment contract shall not be signed
21 by any party thereto when it contains blank spaces of items
22 which are essential provisions of the transaction; provided,
23 however, if delivery of the goods is not made at the time of the
24 execution of the contract, the identifying numbers [~~of~~] or marks
25 of the goods or similar information and the due date of the

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1 first installment may be inserted by the seller in the seller's
2 counterpart of the contract after it has been signed by the
3 buyer. The buyer's acknowledgment, conforming to the
4 requirements of this section, of delivery of a copy of the
5 contract shall be presumptive proof or, in the case of a holder
6 of the contract without knowledge to the contrary when he
7 purchases it, conclusive proof of such delivery and of
8 compliance with this subsection and any other requirement
9 relating to completion of the contract prior to execution
10 thereof by the buyer in any action or proceeding.

11 I. Notwithstanding the provisions of any other law, a
12 retail installment contract may provide for, and the seller or
13 holder may then charge, collect and receive, a time price
14 differential.

15 The time price differential on a retail installment contract
16 shall be computed on the principal balance of each transaction
17 as determined under Subsection E of this section on contracts
18 payable in successive monthly payments substantially equal in
19 amount from the date of the contract to the maturity of the
20 final payment, notwithstanding that the total time balance
21 thereof is required to be paid in one or more deferred payments.
22 When a retail installment contract provides for payment other
23 than in substantially equal successive monthly payments, the
24 time price differential shall not exceed the amount which will
25 provide the same return as is permitted on substantially equal

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1 successive monthly payment contracts, having due regard for the
2 schedule of payments. The time price differential may be
3 computed on the basis of a full month for any fractional portion
4 of a month in excess of ten days.

5 J. Notwithstanding the provisions of any retail
6 installment contract to the contrary, any buyer may prepay in
7 full the unpaid time balance [~~thereof~~] of the contract at any
8 time before its final due date and, if he does so, shall receive
9 a refund credit [~~thereon~~] for [~~such~~] the prepayment. The amount
10 of [~~such~~] the refund credit shall represent at least as great a
11 proportion of the original time price differential, after
12 deducting [~~therefrom~~] a maximum of ten dollars (\$10.00), as
13 [~~(1)~~] the sum of the monthly balances under the schedule of
14 payments in the contract beginning as of the date after [~~such~~]
15 the prepayment which is the next succeeding monthly anniversary
16 date of the due date of the first installment under the contract
17 or, if the prepayment is prior to the due date of the first
18 installment under the contract, [~~then~~] as of the date after
19 [~~such~~] the prepayment which is the next succeeding monthly
20 anniversary date of the date of the contract bears to [~~(2)~~] the
21 sum of all the monthly balances under the schedule of
22 installment payments in the contract. Where the amount of
23 refund credit is less than one dollar (\$1.00), no refund credit
24 need be made.

25 K. The holder of any retail installment contract, if

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1 it so provides, may collect a delinquency and collection charge
2 on each installment in default for a period of more than ten
3 days in [the] an amount not to exceed [~~five percent of each~~
4 ~~installment or five dollars (\$5.00), whichever is less, or in~~
5 ~~lieu thereof, interest after maturity of each such installment~~
6 ~~not to exceed the highest lawful contract rate]~~ ten dollars
7 (\$10.00). In addition, [~~such~~] the contract may provide for the
8 payment of an attorney's reasonable fee [~~where~~] when it is
9 referred for collection to an attorney not a salaried employee
10 of the holder of the contract and for court costs and
11 disbursements.

12 L. Upon written request of the buyer, the holder of a
13 retail installment contract shall give or forward to the buyer a
14 written statement of the dates and amounts of payments and the
15 total amount unpaid under the contract. A buyer shall be given
16 a written receipt for any payment when made in cash. Such a
17 statement or receipt shall be given the buyer once without
18 charge; if any additional statement is requested by the buyer,
19 it shall be supplied by the holder at a charge not in excess of
20 one dollar (\$1.00) for each additional statement or receipt so
21 supplied.

22 M

23 (1) If, in a retail installment transaction, a
24 retail buyer makes any subsequent purchases of goods or services
25 from a retail seller from whom he has previously purchased goods

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1 or services under one or more retail installment contracts and
2 the amounts under such previous [~~contract or~~] contracts have not
3 been fully paid, the subsequent purchases may, at the seller's
4 option, be included in and consolidated with one or more of the
5 previous [~~contract or~~] contracts. Each subsequent purchase shall
6 be a separate retail installment contract under [~~this act~~]
7 Chapter 56, Article 1 NMSA 1978, notwithstanding that the same
8 may be included in and consolidated with one or more [~~of such~~]
9 previous [~~contract or~~] contracts. All the provisions of [~~this~~
10 ~~act~~] Chapter 56, Article 1 NMSA 1978 with respect to retail
11 installment contracts shall be applicable to such subsequent
12 purchases except as [~~hereinafter~~] stated in this subsection.

13 (2) In the event of such consolidation, in lieu
14 of the buyer's executing a retail installment contract
15 respecting each subsequent purchase as provided in this section,
16 it [~~shall be~~] is sufficient if the seller [~~shall prepare~~]
17 prepares a written memorandum of each subsequent purchase, in
18 which case the provisions of Subsections A, B, C and E of this
19 section shall not be applicable. Unless previously furnished in
20 writing to the buyer by the seller by sales slip, memorandum or
21 otherwise, such memorandum shall contain, with respect to each
22 subsequent purchase, [~~items~~] Paragraphs (1) through (8) of
23 Subsection E of this section and, in addition, the outstanding
24 balance of the previous [~~contract or~~] contracts, the
25 consolidated time balance and the revised installments

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1 applicable to the consolidated time balance, if any.

2 The seller shall deliver to the buyer a copy of such
3 memorandum prior to the due date of the first installment of
4 [~~such~~] the consolidated contract.

5 (3) When such subsequent purchases are made, if
6 the seller has retained title or taken a lien or other security
7 interest in any of the goods purchased under any one of the
8 contracts included in the consolidation, the entire amount of
9 all payments made prior to [~~such~~] the subsequent purchases shall
10 be deemed to have been applied on the previous purchases, and
11 each payment after [~~such~~] the subsequent purchase made on the
12 consolidated contract shall be deemed to have been allocated to
13 the purchases earliest in time. The payments shall be credited
14 first to the current carrying charges and then in reduction of
15 the purchase price of merchandise in the order in which it was
16 purchased. Articles of merchandise for which the sales price
17 and carrying charges have been paid [~~for~~] under this section
18 shall not thereafter be repossessed or considered security for
19 payment of any charge arising out of any subsequent purchases
20 made by the buyer. However, the amount of any down payment on
21 the subsequent purchase shall be allocated in its entirety to
22 [~~such~~] the subsequent purchase. The provisions of this
23 paragraph shall not apply to cases where [~~such~~] previous and
24 subsequent purchases involve equipment, parts or other goods
25 attached or affixed to goods previously purchased and not fully

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1 paid or to services in connection therewith rendered by the
2 seller at the buyer's request."

3 Section 2. Section 56-1-3 NMSA 1978 (being Laws 1965,
4 Chapter 258, Section 3, as amended) is amended to read:

5 "56-1-3. RETAIL CHARGE AGREEMENTS. --

6 A. Each retail charge agreement shall be in writing
7 and signed by the buyer. A copy of any such agreement executed
8 on or after the effective date of this [aet] section shall be
9 delivered or mailed to the buyer prior to the date on which the
10 first payment is due [~~thereunder~~] under the agreement. Any
11 acknowledgment by the buyer of delivery of a copy of the
12 agreement contained in the body thereof shall be in a size equal
13 to at least ten-point bold type and shall appear directly above
14 the buyer's signature. No agreement executed on or after the
15 effective date of this [aet] section shall be signed by the
16 buyer when it contains blank spaces to be filled in after it has
17 been signed. The buyer's acknowledgment, conforming to the
18 requirements of this subsection, of delivery of a copy of an
19 agreement shall be presumptive proof in any action or proceeding
20 of such delivery and that the agreement, when signed, did not
21 contain any blank spaces as [~~herein~~] provided in this section.
22 All retail charge agreements executed on or after the effective
23 date of this [aet] section shall state the maximum amount and
24 rate of the time price differential to be charged and paid
25 [~~pursuant thereto~~]. Any such agreement shall contain

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1 substantially the following notice printed or typed in a size
2 equal to at least ten-point bold type:

3 "NOTICE TO THE BUYER--DO NOT SIGN THIS AGREEMENT BEFORE YOU
4 READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO
5 A COPY OF THE AGREEMENT YOU SIGN. "

6 B. The buyer under the retail charge agreement shall
7 promptly be supplied with a statement as of the end of each
8 monthly period, which need not be a calendar month, or other
9 regular period agreed upon in writing, at the end of which there
10 is any unpaid balance [~~thereunder~~], which statement shall recite
11 the following:

12 (1) the unpaid balance under the retail charge
13 agreement at the beginning and at the end of the period;

14 (2) the dollar amount of each purchase by the
15 buyer during the period and, unless a sales slip or a memorandum
16 of each purchase has previously been furnished the buyer or is
17 attached to the statement, the purchase or posting date, a brief
18 description or identification and the cash price of each
19 purchase;

20 (3) the payments made by the buyer and any other
21 credits to the buyer during the period;

22 (4) the amount, if any, of any time price
23 differential for [~~such~~] the period; and

24 (5) a legend to the effect that the buyer may at
25 any time pay his total unpaid balance or any part thereof.

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[bracketed material] = delete

1 C. Notwithstanding the provisions of any other law, a
2 retail charge agreement may provide for, and the seller or
3 holder may then charge, collect and receive, a time price
4 differential for the privilege of paying in installments
5 [thereunder].

6 D. The time price differential on a retail charge
7 agreement shall be computed from month to month, which need not
8 be a calendar month, or other regular period, on all amounts
9 unpaid under the agreement at the beginning of each such period.
10 The time price differential under this subsection may be
11 computed for all unpaid balances within a range of not in excess
12 of ten dollars (\$10.00) on the basis of the median amount within
13 such range, if as so computed [~~such~~] the time price differential
14 is applied to all unpaid balances within such range.

15 E. A retail charge agreement may also provide for, and
16 the seller or holder may then charge, collect and receive a
17 delinquency charge on each installment in default for a period
18 of more than ten days in an amount not to exceed ten dollars
19 (\$10.00). In addition, the agreement may provide for the
20 payment of an attorney's reasonable fee [where] when it is
21 referred for collection to an attorney not a salaried employee
22 of the holder of the retail charge agreement or any unpaid
23 balance thereunder and for court costs and disbursements."

24 Section 3. Section 56-1-9 NMSA 1978 (being Laws 1965,
25 Chapter 258, Section 9) is amended to read:

. 114002.2

1 FORTY-THIRD LEGISLATURE

2 FIRST SESSION, 1997

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6 February 6, 1997

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8 Mr. President:

9
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
11 whom has been referred

12
13 SENATE BILL 354

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 FINANCE COMMITTEE.
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20 Respectfully submitted,

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25 _____
Roman M. Maes, III, Chairman

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Adopted _____ Not Adopted _____

1 (Chief Clerk) (Chief Clerk)

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4 Date _____

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7 The roll call vote was 4 For 2 Against

8 Yes: 4

9 No: McKibben, Maes

10 Excused: Fidel, Robinson, Wilson, Maloof

11 Absent: None

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