

Legislative Analysis



MOTOR VEHICLE SALES FINANCE ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5354 and 5363 as introduced
Sponsor: Rep. Phil Skaggs

Analysis available at
<http://www.legislature.mi.gov>

House Bills 5355 and 5357 as introduced
Sponsor: Rep. Jasper R. Martus

House Bills 5356 and 5366 as introduced
Sponsor: Rep. Julie Brixie

House Bills 5358 and 5359 as introduced
Sponsor: Rep. Jason Morgan

House Bills 5362 and 5364 as introduced
Sponsor: Rep. Sharon MacDonell

House Bills 5360 and 5361 as introduced
Sponsor: Rep. Christine Morse

House Bills 5365 and 5367 as introduced
Sponsor: Rep. Donavan McKinney

Committee: Insurance and Financial Services
Complete to 5-15-24

SUMMARY:

House Bill 5354 would amend the Motor Vehicle Sales Finance Act to make several changes regarding the licensing of sales finance companies and installment sellers and the penalties prescribed by the act. The bill would also make numerous technical and editorial changes.

Application for Sales Finance Company or Installment Seller License

The bill would make several changes regarding the application for and renewal of sales finance company licenses or installment seller of motor vehicles licenses under the act.

Currently, applications for renewal are due on or before the June 16 preceding the renewal period and licenses expire annually on July 1.

The bill would change the renewal application date to the December 1 preceding the renewal period, with licenses now expiring on December 31 annually. If a licensee had a change to the information on file with the Department of Insurance and Financial Services (DIFS) with their renewal application, they would have to notify the department within 30 days of the change.

In addition, a license would not be renewed if the applicant fails to pay the renewal fee established by the bill (described below). If the fee is not received on or before January 31, the licensee would be subject to a \$25 fee per day, up to a maximum of \$1,000 (i.e., 40 days).

Applicants for initial licensure or a license renewal as an installment seller could request an extended licensing period of up to four years. DIFS would have to deny the extended licensing period if the applicant had failed to pay any required fee at the time of the request.

Bond Requirements

Currently, the act requires each sales finance company licensee to have a surety bond of \$20,000, plus \$10,000 for each additional location. However, licensees that are also licensed under various other acts are only required to have bonds worth \$5,000 (plus an additional \$5,000 for each additional location).

The bill would eliminate the provision allowing for lower bond amounts for those licensees.

License Fees

The bill would eliminate the current license fee schedule and authorize the DIFS director to annually establish license and contract fees for each calendar year. The fees would be set as an amount necessary to pay, but not exceed, the department's reasonably anticipated costs of administering the act. The bill would require these fees to be set as follows:

Category	Current Fee (if applicable)	Proposed Fee
Obtain or renew an installment seller license	\$30	Up to \$150 plus up to \$50 per additional location
Installment seller extended licensing period	N/A	Annual license fee multiplied by number of years in extended period
Obtain or renew a sales finance company license	\$150, plus \$75 per additional location or (for financial institutions) \$35 per licensed location	Up to \$500 plus \$50 per additional location
Amend existing license	N/A	Up to \$150

The bill would also require DIFS to establish a contract fee for each installment sale executed by a licensee, to be collected by the licensee and deposited in the Motor Vehicle Sales Finance Act Fund (described below). The fee would have to be set by July 1 annually as a whole number increment from \$2 to \$5.

Finally, the bill would eliminate the current requirement that a licensee pay an examination fee for any examination of its records conducted by DIFS.

Contracting with NMLS

The bill would authorize the DIFS director to establish relationships or contracts with the Nationwide Multistate Licensing System (NMLS),¹ or any other authorized party, to collect and maintain records and process transaction fees or other fees related to licensed installment sellers or sales finance companies or other persons subject to the act.

Specifically, DIFS could use the NMLS for any of the following:

- Requesting information from and distributing information to the U.S. Department of Justice or any governmental agency.
- Requesting and distributing information to and from any source as directed by the DIFS director.

¹ <https://www.csbs.org/nationwide-multistate-licensing-system>

Control Person Requirements

The bill would add a requirement that every **control person** or individual seeking to become a control person of a sales finance company applicant or licensee submit the following to DIFS through the NMLS:

- The individual's fingerprints for submission to the Federal Bureau of Investigation for a state and national criminal history background check, unless the control person currently resides, and for the last 10 years has resided, outside of the United States.
- Authorization for DIFS to receive the state and national criminal history background checks described above.
- The individual's personal history and experience, in a form prescribed by DIFS, which would have to include all of the following:
 - An independent credit report from a consumer reporting agency, unless the control person does not have a Social Security number.
 - Information related to any criminal convictions or pending charges against the individual.
 - Information related to any regulatory or administrative action or any civil litigation involving fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

Control person would mean an individual that has the power to do any of the following:

- Vote, directly or indirectly, at least 10% of the outstanding voting shares or voting interests of a sales finance company applicant or licensee or a person in control of the applicant or licensee.
- Elect or appoint executive officers, managers, directors, trustees, or other persons that exercise managerial authority of a person in control of a sales finance company applicant or licensee.
- Exercise, directly or indirectly, a controlling influence over the management or policies of a sales finance company applicant or licensee or a person in control of the applicant or licensee.

Evidence of compliance with these requirements would be required to be included with each application for a sales finance company license.

Motor Vehicle Sales Finance Act Fund

Currently, the act allocates funds from the act to the Financial Institution Bureau to be used for its operations.

The bill would eliminate this earmark and require all money and assets received under the act to be deposited in the newly created Motor Vehicle Sales Finance Act Fund. The state treasurer would direct the investment of the fund, and DIFS would be the administrator for audit purposes.

DIFS would expend money from the fund, upon appropriation, only to administer and enforce the act and to pay other costs associated with its regulatory obligations. Money would not lapse into the general fund at the close of a fiscal year.

Transfer of License

Currently, the act provides that licenses are not transferrable or assigned.

The bill would allow a license to be transferred or assigned with the consent of the DIFS director (provided that the relevant fees are paid). Either of the following would be considered the transfer of a license:

- The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee that is a corporation.
- The sale, transfer, assignment, or conveyance of more than 25% of the interest in a licensee that is a partnership or other unincorporated association.

Examinations and Investigations

Currently, the act allows DIFS to investigate and examine the records of a licensee.

The bill would provide that, if the examination is a *routine examination*, the department would have to do both of the following:

- Provide the licensee with at least 36 hours' *written notice* of the examination.
- Maintain a record of the delivery of the notice described above in the examination record.

Routine examination would mean an examination that is not the result of a complaint or a suspected violation of the act.

Written notice would include notice by email or text message.

DIFS would also be authorized to conduct unannounced, periodic, on-site investigations in response to a complaint.

For the purposes of examinations and investigations, the bill would authorize the department to do all of the following:

- Enter into agreements or relationships with other government officials or regulatory associations to share resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained during an examination or investigation.
- Use, hire, contract, or employ public or privately available analytical systems, methods, or software.
- Accept and rely on examination or investigation reports made by other state or federal government officials.
- Accept audit reports prepared by an independent certified public accountant in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report into the report of the examination, report of investigation, or other writing of the department.

The bill would prohibit DIFS or any current or past staff from disclosing any facts and information obtained in the course of their duties, unless that individual is required under law to report on, take official action concerning, or testify in any proceedings regarding a licensee. This prohibition would not apply to the furnishing of information or documents to any federal, foreign, or out-of-state regulatory agency with jurisdiction over a licensee and would not apply to any disclosure made in the public interest at the discretion of the DIFS director.

Preservation of Records and Reports

Currently, the act requires licensees to maintain certain books, accounts, and other records that may be used by DIFS to determine if they are in compliance with the act for at least two years after the final entry in them is made.

The bill would allow these records to be kept at a location other than the licensee's principal place of business, as long as they are made available to DIFS upon request. If the records are kept out of state, the licensee would have to pay the reasonable travel, lodging, and meal expenses of any person required to travel to examine them. The bill would require DIFS to accept any record or document electronically, if possible and practical.

In addition, the bill would require a licensee to file a report with DIFS providing information, as required by DIFS, about the business and operations of the licensee. The report would be due on or before a date determined by, and in a form prescribed by, the DIFS director. If a report is not received by the prescribed date, the licensee would be subject to a \$25 fee per day, up to a maximum of \$1,000.

Any individual that willfully and knowingly subscribes and affirms a false statement in a report would be subject to all penalties under the act.

Violations/Cease and Desist Orders

Currently, the act allows the DIFS director to revoke or suspend a license if they determine that any of the following apply:

- The licensee has made any material misstatement in the application for license.
- The licensee has violated any provisions of the act.
- The licensee refuses or has refused to allow DIFS to make examinations authorized by the act.
- The licensee, if a sales finance company, has failed to maintain in effect the bond required under the act.
- The licensee has failed to maintain satisfactory records required by the act.
- The licensee has falsified records required to be maintained by the act.
- The licensee has, after proper notice, failed to file any report with DIFS within the time stipulated in the act.
- The licensee has failed to pay the fine required by the act for failure to file reports to DIFS within the time stipulated.
- The licensee has defrauded any retail buyer to the buyer's damage or has willfully failed to perform any written agreement with any retail buyer.
- Any fact or condition exists or is discovered that would have warranted the refusal to issue the license if it had existed or been discovered when the application was filed.

In addition to this authority, the bill would authorize DIFS, in the circumstances described above, to order the licensee to cease and desist or to assess a civil fine, as established by the bill.

Issuing a Cease and Desist Order

The bill would authorize DIFS to issue and serve a cease order to a licensee if it determines that the licensee is or has engaged in a practice that poses a threat of financial loss or threat to the public welfare, or is or has violated a law, rule, or order.

The cease and desist order would have to contain a statement of the facts constituting the alleged practice or violation and establish a time and place for a hearing to determine if an order to cease and desist should be issued.

Licensees could consent to a cease and desist order under the bill. If a licensee, or their representative, failed to appear at the scheduled hearing, they would be considered to have consented to the issuance of a cease and desist order.

If a licensee consents to the order or the department finds that the practice or violation specified in the initial order is established, the cease and desist order would become final. The final order would become effective on the date of service, except to the extent that it is stayed, modified, terminated, or set aside by the department or a court. Orders consented to by the licensee would be effective at the time specified and would remain effective and enforceable as provided in the order.

Finalized orders could require the licensee and its officers, directors, members, partners, trustees, employees, agents, or control persons to cease and desist from the specified practice or violation and to take affirmative action to correct the conditions resulting from it.

Penalties

The bill would authorize the following penalties for violations of the act:

- A civil fine of up to \$15,000 for a person that intentionally makes a false statement, misrepresentation, or false certification in a record or document filed or required to be maintained under the act or that intentionally makes a false entry or omits a material entry in a record.
- A felony punishable by up to three years in prison and a fine or up to \$15,000, or both, for a person that knowingly engages without a license in an activity for which a license is required under the act.
- DIFS could assess a civil fine of up to \$1,000 per violation, plus the state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees, against a person that violates the act, a rule promulgated under it, or an order or ruling issued by the DIFS director, or any other applicable state or federal law,

The bill would also allow a court to order a person convicted of a felony for operating without a license under the act to pay restitution as provided in the Code of Criminal Procedure² and the William Van Regenmorter Crime Victim's Rights Act.³

Installment Sales Contracts

The bill would also make several changes related to installment sales contracts, including the following:

- Beginning on the bill's effective date, holders of installment sales contracts would be prohibited from charging fees for extending the scheduled due date or deferring payments on a contract.
- Any charge on a contract made after the bill's effective date could not be paid, deducted, received in advance or compounded. Charges would have to be computed

² <http://legislature.mi.gov/doc.aspx?mcl-769-1a>

³ <http://legislature.mi.gov/doc.aspx?mcl-Act-87-of-1985>

on the unpaid principal balance or portion of the balance, specifically expressed in every obligation signed by the borrower, and computed based on the number of days actually elapsed.

- For contracts entered into before the bill's effective date that include precomputed interest, sellers could compute the finance charge on the basis of a full month for a fractional month period of more than 10 days.

MCL 492.102 et seq. and proposed MCL 492.104a, 492.109a, and 492.137a

House Bills 5355 through 5367 would make complementary changes, and update citation references, in the following acts:

- Code of Criminal Procedure (HB 5355; MCL 777.14p).
- 1978 PA 472 (HB 5356; MCL 4.414).
- Natural Resources and Environmental Protection Act (HB 5357; MCL 324.20101).
- Uniform Commercial Code (HB 5358; MCL 440.9201).
- Identity Theft Protection Act (HB 5359; MCL 445.63).
- 1971 PA 227 (HB 5360; MCL 445.111).
- Retail Installment Sales Act (HB 5361; MCL 445.851a et seq.).
- Credit Reform Act (HB 5362; MCL 445.1852 et seq.).
- Consumer Financial Services Act (HB 5363; MCL 487.2052 et seq.).
- Deferred Presentment Service Transactions Act (HB 5364; MCL 487.2122).
- Guaranteed Asset Protection Waiver Act (HB 5365; MCL 492.23)
- 1846 RS 65 (HB 5366; MCL 565.25).
- Michigan Penal Code (HB 5367; MCL 750.219e et seq.).

Each bill is tie-barred to HB 5354 and cannot take effect unless HB 5354 is also enacted.

FISCAL IMPACT:

House Bill 5354 would likely increase revenue for the Department of Insurance and Financial Services, namely by revising language related to licensing fees. A more detailed examination of potential revenue impacts is forthcoming. The bill would not be anticipated to have an appreciable impact on DIFS' costs.

The bill also would have an indeterminate fiscal impact on the state and on local units of government related to criminal penalties and civil fines.

Under the bill, a person that is not licensed and knowingly engages in an activity for which a license is required would be guilty of a felony. The number of convictions that would result under provisions of the bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

Also under the bill, civil fines could be assessed under different circumstances. Revenue collected from payment of civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be required to be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial branch and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of costs related to state prisons, penal and civil fine revenue collections, or costs to local courts cannot be made.

House Bill 5355 is a companion bill to House Bill 5354 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the felony of installment sales of motor vehicles – acting without installment seller or sales finance company, as a Class F felony punishable by a statutory maximum of three years. The bill would not have a direct fiscal impact on the state or on local units of government.

House Bill 5356 would result in marginal computer programming costs to the Department of State related to modifying its dealer form to indicate installment sales and to report information to DIFS. These costs would be covered by existing appropriations.

House Bills 5357 to 5367 would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.