

DEPARTMENT OF STATE

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Sections 121(b), 2112, 2210(e), 2741, and 2906(e);
(5 Del.C. §§121(b), 2112, 2210(e), 2741, and 2906(e))
5 DE Admin. Code 2101, 2201, 2701 and 2901

FINAL

ORDER

2901 Operating Regulation

IT IS HEREBY ORDERED, this 7th day of September, 2016, that amended Regulations 2101, 2201, 2701 and 2901 are adopted as Regulations of the State Bank Commissioner. The effective date of each of these Regulations is October 13, 2016. These Regulations are adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code and pursuant to the requirements of Chapters 11 and 101 of Title 29 of the Delaware Code, as follows:

1. The 148th General Assembly passed House Bill 286 with House Amendment No. 1, which was signed by the Governor on May 9, 2016, and enacted at 80 Delaware Laws Chapter 225 (hereinafter referred to as "HB 286").

2. HB 286 amends Title 5 of the Delaware Code by, among other things, deleting requirements relating to the display of licenses, as provided: in Section 3 of HB 286, by amending Section 2106 of Title 5; in Section 4 of HB 286, by amending Section 2206(a) of Title 5; in Section 10 of HB 286, by amending Section 2719 of Title 5; and in Section 12 of HB 286, by amending Section 2902 of Title 5.

3. The State Bank Commissioner is authorized to adopt regulations in accordance with Chapters 21, 22, 27 and 29 of Title 5 of the Delaware Code, as provided in Sections 121(b), 2112, 2210(e), 2741 and 2906(e) of Title 5.

4. The Administrative Procedures Act, Chapter 101 of Title 29 of the Delaware Code, provides at Section 10113, in pertinent part:

"(b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally: ...

"(5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; ...

"Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title."

5. Regulation 2101 (Mortgage Loan Brokers Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 3 of HB 286 to Section 2106 of Title 5 of the Delaware Code.

6. Regulation 2201 (Licensed Lenders Operating Regulation) is amended by deleting the words "License and" in Section 3.0 and by deleting Section 3.1 about displaying the license, to conform to the amendment in Section 4 of HB 286 to Section 2206(a) of Title 5 of the Delaware Code.

7. Regulation 2701 (Cashing of Checks, Drafts or Money Orders Operating Regulation) is amended by deleting the words "License and" in Section 2.0 and by deleting Section 2.1 about displaying the license, to conform to the amendment in Section 10 of HB 286 to Section 2719 of Title 5 of the Delaware Code.

8. Regulation 2901 (Financing the Sale of Motor Vehicles Operating Regulation) is amended by deleting Section 3.0 Display of License, to conform to the amendment in Section 12 of HB 286 to Section 2902(d) of Title 5 of the Delaware Code.

Robert A. Glen, State Bank Commissioner

2901 Operating Regulation

5 Del.C. §2906(e)

Effective Date: December 11, 2014

1.0 Applicability of Chapter

1.1 Lease Contracts. 5 Del.C. Ch. 29 applies to a lease contract only when:

1.1.1 The lessee contracts to pay a sum substantially equivalent to, or in excess of, the value of the motor vehicle for the use of the motor vehicle over the lease term;

- 1.1.2 The lessee is obligated to become, or has the option of becoming, the owner of the motor vehicle at some time during, or at the expiration of, the lease contract; and
- 1.1.3 The value for which the motor vehicle is to be sold at the end of the lease term is not paid in a single installment.
- 1.2 5 **Del.C.** Ch. 29 applies to all motor vehicles meeting the definition of that term in 5 **Del.C.** §2901(1) regardless of whether the intended use is personal or commercial.

2.0 Compliance with Applicable Laws

- 2.1 All licensees shall comply with 5 **Del.C.** Ch. 29, all regulations issued thereunder, and all other applicable State and federal statutes and regulations.
- 2.2 The manager and appropriate staff of each licensed office shall familiarize themselves with all such statutes and regulations.
- 2.3 Each licensed office shall maintain, either by paper copy or through electronic access, 5 **Del.C.** Ch. 29 and the following regulations:
 - 2.3.1 Regulation 101, Retention of Financial Institution Records.
 - 2.3.2 Regulation 2901, Operating Regulation;
 - 2.3.3 Regulation 2902, Minimum Records;
 - 2.3.4 Regulation 2903, Report of Delaware Loan Volume; and
 - 2.3.5 Regulation 2904, Report of Delaware Assets.

3.0 Display of License

~~Each licensed office open to the public shall prominently display its license issued under 5 **Del.C.** Ch. 29 in clear view of all customers.~~

18 DE Reg. 472 (12/01/14)

4.03.0 Security Interest Satisfaction

A licensee shall take all necessary action to discharge, satisfy or release a retained title, lien, or other security interest for a retail installment contract within 30 days of the date that the debt is satisfied or fully performed.

5.04.0 Insurance

- 54.1 Credit Life and Health Insurance
 - 54.1.1 A licensee may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to Title 18 of the Delaware Code and all applicable Insurance Commissioner Regulations.
 - 54.1.2 Every licensee offering credit life and health insurance whose charges do not conform to those authorized by Title 18 of the Delaware Code shall maintain in each office a copy of a submission to the Insurance Commissioner requesting the non-conforming charge and the Insurance Commissioner's approval of those charges.
 - 54.1.3 Credit life insurance refunds shall be calculated as of the date of death except as permitted by 18 **Del.C.** §3705(b)(4).
 - 54.1.4 Credit health insurance payments received by a licensee shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue if payment is received after the payment due date.
- 54.2 A licensee may offer, but not require, only such other insurance products as the State Bank Commissioner may, upon written approval, permit.
- 54.3 Any licensee may require proof of insurance coverage for any loan secured by a motor vehicle or other collateral. The borrower has the right to submit any existing policy(s) naming the licensee as beneficiary, provided such policy is acceptable to the licensee as to coverage, term and carrier. Upon notification to the licensee of cancellation of any policy, the licensee may place coverage to protect the licensee's interest. The borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. A licensee may, if requested by the borrower, place such insurance coverage as is necessary to protect the licensee's interest at the inception of the loan.
- 54.4 Any insurance authorized by this regulation, other than the insurance coverage authorized by ~~§5.3~~ §4.3 of this regulation, must be specifically requested by the borrower in writing. This request must be attached to, or part of, the loan application.

18 DE Reg. 472 (12/01/14)

6.05.0 Negative Equity Financing

Inclusion of negative equity financing is permissible only if the amount of an existing lien in a credit sales transaction exceeds the value of a trade-in. In a negative equity trade-in transaction where no cash payment is involved, licensees must disclose a zero down-payment. The negative equity must not be disclosed as a negative number for the consumer's down-payment. Any negative equity to be financed under the retail installment sales contract must be disclosed under 5 Del.C. §2907(e)(4), and not 5 Del.C. §2907(e)(2).

7.06.0 Advertising

- 76.1 A licensee shall not advertise in any way that is false, misleading or deceptive.
- 76.2 Any advertising that in any way falsely indicates that its source or origin is a government agency or the recipient's existing lender is prohibited.
- 76.3 A licensee shall not advertise any credit terms that are not available.

18 DE Reg. 472 (12/01/14)

8.07.0 Internet Websites

If the website allows the licensee to conduct any business governed by its license, the website shall properly secure the transmission of all confidential information entered on the website or otherwise exchanged between the licensee and any consumer or borrower.

18 DE Reg. 472 (12/01/14)

9.08.0 Information Security

Each licensee shall implement and maintain a written comprehensive security program that contains appropriate administrative, technical and physical measures to safeguard the confidentiality of all information concerning applicants and borrowers customer related to the business governed by this regulation, including, but not limited to, all application information, account information, and information from any consumer report.

409.0 Repossession Policy

Each licensee shall comply in all respects with 6 Del.C. Article 9, Secured Transactions, Part 6, Default.

18 DE Reg. 472 (12/01/14)

4410.0 Examination Fees and Supervisory Assessments

- 4410.1 The Commissioner may examine licensees pursuant to 5 Del.C. §§122 and 2906. The cost of such examinations are assessed in accordance with 5 Del.C. §127(a). A licensee shall remit payment not later than 30 days after the date of the examination invoice.
- 4410.2 The Commissioner shall assess each licensee a supervisory assessment fee, which is due and payable on August 1 of each year, in accordance with 5 Del.C. §127(b).
- 4410.3 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day that such fee or assessment remains unpaid after the due date, in accordance with 5 Del.C. §127(a) and (b).

4211.0 Examination Responses

A licensee shall send the Commissioner a written response to every violation specified in a report of examination no later than 30 days after the date of the report.

3 DE Reg. 653 (11/01/99)

17 DE Reg. 994 (04/01/14)

18 DE Reg. 472 (12/01/14)

20 DE Reg. 310 (10/01/16) (Final)