The undersigned intends to circulate and file an initiative petition and hereby makes application for the issuance of an official serial number to be printed in the lower right-hand corner of each side of each signature sheet of such petition. Attached hereto is the full title and text, in no less than eight point type, of the measure or constitutional amendment intended to be initiated at the next general election.

The Arizona Fair Lending Act forbids interest, fees, and charges exceeding an annual rate of 36% on title loans as defined; requires licenses for title lending, equal installment payments, clear title to the motor vehicle to secure such loans, filing liens used to secure such loans and release of liens if loans are paid in full; prohibits taking additional security for such loans, balloon payments, prepayment penalties, accelerating loans for reasons other than default, and disguising title loans as another device to avoid the Act's requirements; voids noncompliant loans; permits attorney general enforcement and private right of action.

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Arizonans for Fair Lending (Our Voice Our Vote Arizona, LUCHA)
Committee Name
202000082
Committee ID No.
Cymone Bolding
Chairperson
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By submitting this Application for Serial Number and checking all boxes below, I acknowledge the following:

☐ That I have received and will review the accompanying Instructions for Statewide Initiatives, including the Secretary of State's recommended best practices for printing copies of the Statewide Initiative Petition to be circulated.

☐ That at the time of filing, I was provided instructions regarding accurate completion of the Statewide Initiative Petition form.

Cymone Bolding
Applicant Signature

June 18, 2019
Date

Office of the Secretary of State
1700 W. Washington Street
Phoenix, Arizona 85007
Rev. 03/04/2019
OFFICIAL TITLE
AN INITIATIVE MEASURE

AMENDING SECTIONS 44-281 and 44-291, ARIZONA REVISED STATUTES; RELATING TO INTEREST RATES ON TITLE LOANS.

TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the State of Arizona:

Section 1. Section 44-281, Arizona Revised Statutes, is amended to read:

44-281. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" means the superintendent of financial institutions.

2. "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 which is the subject matter of the retail installment contract, if such sale had been a sale for cash instead of a retail installment transaction. The cash sale price may include charges for accessories and their installation and for delivery, and servicing, repairing or improving the motor vehicle, and for charges for other costs that are necessary or incidental to the transaction and that the seller furnishes or agrees to pay on behalf of the buyer, including taxes, assessor's fees, license fees and fees for filing, recording or otherwise perfecting or releasing a reserved title or lien, and may include a reasonable charge for the seller's services.

3. "Finance charge" means the amount agreed upon between the buyer and the seller, as limited herein, which in determining the cost of the motor vehicle is added to the aggregate of the following: The cash sale price and the amount, if any, included for insurance and other benefits where a separate cost is assigned thereto.

4. "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.

5. "Motor vehicle" means any self-propelled device in or by which any person or property is or may be transported or drawn on a public highway, except:

(a) Devices that move upon or are guided by a track or travel through the air.

(b) The following, if not designed primarily for highway transportation, but which may incidentally be operated on a public highway:

(i) Tractors.
(ii) Buses.
(iii) Trucks.
(iv) Power shovels.
(v) Road machinery.
(vi) Agricultural machinery.

6. "Person" means an individual, partnership, association, trust, corporation, or other legal entity.

7. "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller, not for the purpose of resale, and who executes a retail installment contract in connection therewith.

8. "Retail installment contract" or "contract":

(a) Means an agreement, entered into in this state, pursuant to which the title to or a lien upon the motor vehicle, which 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.

(b) Includes:

(i) 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 for no other or a nominal consideration upon full compliance with the provisions of the contract.
(ii) A secondary motor vehicle finance transaction TITLE LOAN.

9. “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 cost payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance if a separate charge is made and the finance charge shall together constitute the cost of the motor vehicle.

10. “Retail seller” or “seller” means a person who sells a motor vehicle to a retail buyer for purposes other than resale under or subject to a retail installment contract. For the purposes of Paragraph 12 of this section “seller” means a person who sells and retains the use of the motor vehicle.

11. “Sales finance company”:

(a) Means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers.

(b) Includes a person engaged, in whole or in part, in the business of creating or holding retail installment contracts that exceed a total aggregate outstanding indebtedness of fifty thousand dollars $50,000.

(c) Does not include:

(i) The pledgee of an aggregate number of retail installment contracts to secure a bona fide loan thereon.

(ii) A motor vehicle dealer who creates retail installment contracts and assigns the retail installment contracts to third party lenders or financial institutions.

12. “Secondary motor vehicle finance transaction” “TITLE LOAN”:

(a) Means any contract that includes provisions for either: A NONPURCHASE CASH LOAN FOR UP TO $5,000 THAT IS SECURED BY A CLEAR TITLE TO THE BORROWER’S MOTOR VEHICLE AND THAT HAS A TERM OF NOT MORE THAN FOUR YEARS.

(i) Obtaining a security-interest in or lien on a motor vehicle other than in connection with the sale of that motor vehicle.

(ii) The sale or conditional sale of a motor vehicle and the seller’s right to retain use of the motor vehicle after the sale or conditional sale.

(b) Includes any conditional sales contract or contract for the bailment or leasing of a motor vehicle in which the bailee or lessee agrees to pay for use of the motor vehicle and the bailee or lessee is required to become or has the option of becoming the owner of the vehicle for any or no compensation.

(e)(b) Does not include any commercial transaction as defined in § 44-291.

13. “TITLE LENDER” MEANS A PERSON THAT ADVERTISES TO MAKE OR PROCE, SOLICITS OR HOLDS ITSELF OUT TO MAKE OR PROCURE, OR MAKES OR PROCURES A TITLE LOAN.

Sec. 2. Section 44-291, Arizona Revised Statutes, is amended to read:

44-291. Computation of interest; prepayment rebate; additional charges; secondary motor vehicle finance transaction.

A. Except as provided in subsections G and H of this section, under a retail installment contract it is lawful to charge and receive interest not to exceed the maximum rate set by contract.

B. The finance charge may be computed either at a single annual percentage rate using the actuarial method or it may be precomputed on the assumption that all payments will be made in the amount and on the dates scheduled. If the finance charge is precomputed, the fact that payments are made either before or after the date due does not affect the amount of finance charge which the seller or holder may charge or receive. If the precomputed contract balance is prepaid in full by cash, a new loan, refinancing or otherwise, the seller or holder shall charge only for the finance charge which has been earned and unpaid late payment or delinquency charges as of the date of prepayment, and the buyer shall receive a rebate of that portion of the precomputed finance charge which is the difference between the total precomputed finance charges and the charges at the contract finance charge computed on the unpaid principal balance based on the number of days or months to maturity based on either a thirty day month—three hundred sixty day year or daily three hundred sixty-five or three hundred sixty-six day year on the number of days remaining to final maturity, except that the number of days shall be the same as that used in calculating the finance charge as prescribed in subsection C of this section. The amount of such rebate shall not be computed pursuant to the method commonly known as the “rule of 78’s”. To simplify the calculation of earned finance charge, it is permissible to assume that all payments were made as originally scheduled or as otherwise mutually agreed.
C. It is permissible to calculate a finance charge on an annual basis of twelve months of thirty days each, or on a daily basis if a day is counted as 1/360th, 1/365th, or 1/366th of a year, as the buyer and seller or holder may agree by writing. The seller or holder may also charge a late payment or delinquency charge, in addition to all finance charges permitted, on each installment not paid in full on the tenth day after its due date in an amount not to exceed five percent (5%) of the unpaid balance of the installment.

D. In addition to the cash sale price of the vehicle, the seller may charge for any insurance premiums incurred in connection with the retail installment transaction.

E. Notwithstanding the late payment or delinquency charge provided in subsection C of this section, in a commercial transaction, the seller or holder may charge a late payment or delinquency charge, in addition to all finance charges permitted, on each installment not paid in full on the tenth day after its due date in an amount of not more than five percent (5%) of the unpaid balance of the installment.

F. 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. Filling 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 is not necessary to the validity of a written assignment of a contract as against creditors, subsequent purchasers, pledgors, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of his contract, payment under the contract made by the buyer to the last known holder of such contract is binding on all subsequent holders.

G. THE FOLLOWING REQUIREMENTS APPLY if the retail installment contract is a secondary motor vehicle finance transaction TITLE LOAN:

the seller, bailor, lender or lessor shall determine the annual secondary motor vehicle finance rate and all charges relating to the sale, conditional sale, bailment or lease and repurchase of the vehicle. The seller, bailor, lender or lessor shall calculate the annual secondary motor vehicle finance rate by multiplying the monthly secondary motor vehicle finance rate by twelve. A retail installment contract that is a secondary motor vehicle finance transaction is subject to the following maximum finance rates on a secondary motor vehicle finance contract in the original principal amount of:

1. Five hundred dollars or less, a monthly finance rate of seventeen per cent.
2. More than five hundred dollars but not more than two thousand five hundred dollars, a monthly finance rate of fifteen per cent.
3. More than two thousand five hundred dollars but not more than five thousand dollars, a monthly finance rate of thirteen per cent.
4. More than five thousand dollars, a monthly finance rate of ten per cent.

1. UNLESS EXEMPT UNDER SECTION 6-602 OR LICENSED AS A CONSUMER LENDER UNDER SECTION 6-603, A PERSON, WHETHER LOCATED IN THIS STATE OR IN ANOTHER STATE, SHALL NOT ENGAGE IN THE BUSINESS OF TITLE LENDING IN THIS STATE WITHOUT FIRST BEING LICENSED AS A SALES FINANCE COMPANY UNDER THIS CHAPTER.

2. THE TITLE LENDER SHALL NOT CONTRACT FOR OR RECEIVE INTEREST, FEES AND CHARGES EXCEEDING AN ANNUAL RATE OF THIRTY-SIX PERCENT, INCLUDING ALL CHARGES FOR ANY ANCILLARY PRODUCT OR SERVICE AND ANY OTHER CHARGE OR FEE INCIDENT TO A TITLE LOAN.

3. THE NOTE EVIDENCING A TITLE LOAN SHALL PROVIDE FOR THE SCHEDULED REPAYMENT OF PRINCIPAL AND CHARGES IN APPROXIMATELY EQUAL PERIODIC INSTALLMENTS.

4. A LIEN SHALL BE FILED ON ALL TITLES USED TO SECURER A TITLE LOAN.

5. A LOAN MAY NOT BE CONSIDERED SECURED BY A BORROWER’S VEHICLE UNLESS THE BORROWER HOLDS A CLEAR TITLE.

6. OTHER FORMS OF SECURITY MAY NOT BE TAKEN TO SECURE A TITLE LOAN, INCLUDING ACCESS TO THE BORROWER’S DEPOSIT ACCOUNT OR A PREPAID DEBIT CARD THAT ACCEPTS DEPOSIT OF INCOME OR WAGES.

7. THE TITLE LENDER SHALL RELEASE ANY LIEN ON A VEHICLE TITLE SECURING A TITLE LOAN THAT IS PAID IN FULL AND SHALL COMPLY WITH TITLE 47, CHAPTER 9, ARTICLE 6.

8. BALLOON PAYMENTS, PREPAYMENT PENALTIES, CALL OPTIONS AND OTHER CONTRACT PROVISIONS THAT ALLOW A TITLE LENDER TO ACCELERATE THE PAYMENT OF A TITLE LOAN FOR ANY REASON OTHER THAN THE BORROWER’S DEFAULT AS PROVIDED IN THE AGREEMENT EVIDENCING THE TITLE LOAN ARE PROHIBITED.

9. A TITLE LENDER SHALL NOT ENGAGE IN ANY DEVICE, SUBTERFUGE, OR PRETENSE TO EVADE THE REQUIREMENTS OF THIS SUBSECTION INCLUDING:

(a) MAKING LOANS DISGUISED AS A PERSONAL PROPERTY SALE AND LEASEBACK TRANSACTION.
(b) DISGUISSING LOAN PROCEEDS AS A CASH REBATE FOR THE PRETEXTUAL SALE OF GOODS OR SERVICES.

(c) MAKING, OFFERING, ASSISTING OR ARRANGING FOR A BORROWER TO OBTAIN A LOAN WITH A GREATER RATE OR INTEREST, CONSIDERATION OR CHARGE THAN IS ALLOWED BY THIS CHAPTER THROUGH ANY METHOD INCLUDING UNDER TITLE 6, CHAPTER 13, OR CHAPTER 11, ARTICLE 7 OF THIS TITLE OR BY MAIL, TELEPHONE, INTERNET OR ANY OTHER ELECTRONIC MEANS, REGARDLESS OF WHETHER THE PERSON HAS A PHYSICAL LOCATION IN THIS STATE.

10. A LOAN FOR MORE THAN $5,000 OR FOR A TERM GREATER THAN FOUR YEARS MAY NOT BE MADE, OFFERED OR ARRANGED PURSUANT TO THIS SUBSECTION.

H. Except as the result of an accidental or bona fide error, if the licensee charges, contracts for or receives any amount in excess of the finance charges and other fees expressly permitted by this chapter, the secondary motor vehicle transaction is voidable and the licensee has no right to collect or receive any principal, finance charges or other fees in connection with that secondary motor vehicle finance transaction. ANY TITLE LOAN MADE IN VIOLATION OF THIS CHAPTER IS VOID AND UNCOLLECTIBLE AS TO ANY PRINCIPAL, FEE, INTEREST OR CHARGE. Any secondary motor vehicle finance transaction TITLE LOAN that is made by a person who is required to be licensed pursuant to this chapter but who is not licensed is void, and the person has no right to collect, receive or retain any principal, finance charges or other fees in connection with that secondary motor vehicle finance transaction TITLE LOAN. A VIOLATION OF SUBSECTION G OF THIS SECTION IS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE ACTION PURSUANT TO CHAPTER 10, ARTICLE 7 OF THIS TITLE.

I. Section 44-287, subsection B does not apply to a secondary motor vehicle finance transaction TITLE LOAN if the contract complies with the disclosure requirements prescribed in federal law. The seller shall conspicuously disclose in the contract the annual secondary motor vehicle finance rate.

J. For the purposes of this section:

1. “Actuarial method” means the method of allocating payments made on a debt between the unpaid principal balance and the finance charge pursuant to which a payment is applied first to the finance charge due and any remainder is subtracted from the unpaid principal balance.

2. “Commercial transaction” means a transaction in which the motor vehicle is intended by the borrower for use primarily for other than personal, family or household purposes.

Sec. 3. Saving clause

This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this act.

Sec. 4. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 5. Legal Defense

The People of Arizona desire that this initiative, if approved by the voters, be defended if it is challenged in court. They therefore declare that the political committee registered to circulate petitions and campaign in support of the adoption of this initiative, or any one or more of its officers, have standing to defend this initiative on behalf of and as the agent of the People of Arizona in any legal action brought to challenge the validity of this initiative.

Sec. 6 Short title

Title 44, chapter 2.1, article 1, Arizona Revised Statutes, as amended by this act, may be cited as the "Arizona Fair Lending Act."