

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Bulletin 2013-08-CF

In the matter of

Motor Vehicle Installment Sales
Practice of Spot Delivery

**Issued and entered
this 1st day of April 2013
by R. Kevin Clinton
Director**

This bulletin supersedes Bulletin 2010-20-CF, dated December 16, 2010, and further clarifies the position of the Department of Insurance and Financial Services (DIFS) on the motor vehicle installment sales practice of “spot delivery” as it relates to the Motor Vehicle Sales Finance Act (MVSFA), 1950 PA 27 (Ex. Sess.), MCL 492.101, *et seq.*

The practice of “spot delivery” occurs when a buyer and seller sign an installment sales contract for sale of a motor vehicle and the buyer takes delivery of the vehicle “on the spot,” prior to the seller obtaining financing from an end lender. The practice originated in the years when credit reporting agencies only kept normal business hours. Thus, if a motor vehicle seller wished to sell an automobile via an installment sales contract on a weekend or after hours (when the majority of shopping occurred), the sale would have been delayed until the prospective buyer’s credit could be checked for installment sale financing approval. To solve this problem, sellers invented the practice of spot delivery, which allowed a buyer to take possession pursuant to the subsequent credit verification.

The buyer agrees, usually by signing a rider to the contract, that the contract is void if the dealer does not assign the contract within a certain number of days. Although the buyer has possession of the automobile, if the seller determines the contract cannot be assigned, the buyer must either return the vehicle to the seller, pay full price for the vehicle (i.e. the contract is accelerated), or face repossession. In practice, the seller contacts the buyer, explains that the financing was not approved and demands the vehicle be returned or it will be repossessed.

The MVSFA states that “[a]n installment sale contract shall not contain an acceleration clause under which any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the seller or holder deems itself to be insecure.” MCL 492.114(b).

Failure to locate financing or an assignee on the part of the seller generates insecurity in the seller which induces the seller to void or accelerate the contract. This is manifestly contrary to the aforementioned portion of the MVSFA.

Furthermore, the MVSFA states that “[n]o act, agreement or statement of any buyer in any installment sale contract shall constitute a valid waiver of any provision of this act intended by the legislature for the benefit or protection of retail installment buyers of motor vehicles.” MCL 492.132. An installment sales contract that requires the buyer to assent to a spot delivery acceleration clause if the seller fails to assign the contract is inconsistent with the MVSFA.

Therefore, spot delivery practices engaged in by motor vehicle installment sellers violate the Motor Vehicle Sales Finance Act.

Any questions regarding this bulletin should be directed to:

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