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***Moving the Metal: The Auto Finance Podcast* — Breaking Granite: Understanding New Amendments to the New Hampshire Retail Installment Sales Act**

**Hosts: Brooke Conkle and Chris Capurso**

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**Brooke Conkle:**

Welcome to [Moving the Metal](#), the premier legally-focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper's Consumer Financial Services Practice Group.

**Chris Capurso:**

And I'm Chris Capurso, an associate in Troutman Pepper's Consumer Financial Services Practice Group.

**Brooke Conkle:**

Today, we're going to talk about some new amendments to the New Hampshire Retail Installment Act. But before we jump into that topic, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you, [TroutmanPepperFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#).

Also, we have a bevy of other podcasts that you might find interesting. We have the granddaddy of them all, [The Consumer Finance Podcast](#), which, as you might guess, is all things consumer finance-related. [FCRA Focus](#), a podcast dedicated to all things credit reporting. [Unauthorized Access](#), a deep dive into the personalities and issues in the privacy, data, and cybersecurity industry. Finally, [Payments Pros](#), a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out.

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**Brooke Conkle:**

For today, as I previously mentioned, we're discussing new developments in the Granite State. Chris, what's going on?

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**Chris Capurso:**

There's a lot. It's funny because every time I see something about this law, and it's always something about the Granite State because it's a cool name, but I always think of Breaking Bad and how he's got the license plate that says Granite State. I think that's like the first episode of the final season. So, that's what I always think of.

But we're not thinking about the topics discussed in Breaking Bad, we're talking about auto finance, which is decidedly different. So, this new law does a lot and it's funny. Brooke had mentioned our bevy of podcasts. This imposes a bevy of requirements. Some of them new, some of them augmented sales finance, and some other areas, which I'll get to. That's a bit of a teaser, but Brooke, can you just describe generally what we're talking about and how we got here?

**Brooke Conkle:**

Certainly. On August 2 of this year, New Hampshire Governor Chris Sununu signed HB 1243 into law. And that bill significantly revised the current New Hampshire Motor Vehicle Retail Installment Sales Act. That's Chapter 361(a) of the New Hampshire Code. And Chris, I think by the time we heard about this new law, it had already been enacted, right?

**Chris Capurso:**

That is correct. I'll talk about that a little bit later. But a July 1 effective date, which makes you say August 2 was when it was signed. So, why is it effective on July 1?

**Brooke Conkle:**

That's exactly right.

**Chris Capurso:**

Another teaser for later.

**Brooke Conkle:**

So, what does this new law do? And why should this be of interest to auto finance companies?

**Chris Capurso:**

Yes. So, as I alluded, this law does a lot and you wouldn't normally think of New Hampshire as the type of state that would get clients like ringing the phone off the hook asking about something, but it is and it's because of what the law does. I'm going to kind of go through the big changes and they're in kind of an order of the law itself. This isn't ranked in importance or anything like that. Everybody's going to find their own thing that's potentially horrifying about this. But I'm just going to go kind of in the law's order.

So, the first thing is there is an expanded definition of sales finance company. As you might expect, it's a retail installment sales act, so it regulates sales finance. Usually, they just regulate

sales finance. That is not the case now in New Hampshire because the definition of sales finance company has been expanded to include any person acting as a lender, holder, assignee, or servicer under retail installment contracts.

Now, we've got a retail installment sales act related to sales finance that says a sales finance company also includes a lender. If you've got, for example, we talked about refinance programs and how, "Oh, this is a great opportunity for folks who already have the licenses they need to be able to make loans and do all these types of things." Now, there's a new one if you're a lender for motor vehicle sales in New Hampshire. Another notable piece of this is that much like other states, banks, and other depository institutions don't need to be licensed, but the law specifically calls out the banks and other depository institutions are not exempt from the X substantive requirements, which have been also significantly revised.

So, banks who may otherwise feel like, "Oh, this is a licensing statute. You can't argue preemption, whatever you want to argue. The law specifically says, "No. That's not the way this works." Banks are subject to these requirements, and you think of the refinance and usually it's going to be coming from somebody like that. So, this impacts everybody pretty much, in different ways. Some people, it's imposing licensing requirements that weren't there before. In other ways, now just these revisions are going to affect everybody who's subject to this law.

Going off of that, off of that licensing point, one other thing to note is kind of the scope of licensure because now the geographical scope of licensing requirements has been amended, previously this law, which was already there, required licensing only for persons engaged in the applicable business within the state is what the law said. Now, the obligation extends to any non-exempt person, so basically any non-bank or financial institution who engages in the applicable business within the state or with persons located in this state, and neither the act, nor the amendments clearly define what it means to engage in business in the state or for these purposes. This is the type of language that just drives you up the wall because it gives you some choice of law questions. It just gives you all sorts of questions about what it means to be acting in a state, and these are the types of things we encounter a lot with, especially with trying to figure out what type of financing laws apply, and especially in this day and age, where you have online transactions, what is business in the state. We'll see what happens. Unfortunately, the law is already effective, so it's a little unfortunate. One other thing to note –

**Brooke Conkle:**

Chris, you mentioned that you're not doing these in sort of order of importance, but for me, if I'm an auto finance company, I hear these two first topics that you mentioned really just kind of really expanding the definition of a sales finance company and what a lender is. For me, as an auto finance company, that's the message is that you can be headquartered wherever you can be doing business. If you're headquartered in New York, but you're buying paper out of New Hampshire, you're going to be regulated by New Hampshire now. Even if you do not have a physical presence in the state, and that's a really significant change that's going to create a lot of additional burdens for your auto finance company.

**Chris Capurso:**

Absolutely. You've got the law changing drastically, which is its own thing. Then on top of that, the fact that it was effective theoretically a month before it was even signed, creates its own

host of problems and that's something I'll cover a little bit later about what the regulators trying to do about that. But there was also an interesting point about I'm not doing these in rank order. The reason is because each one can be its own problem and this next one is probably going to be a big one that contracts can be voidable for failing to obtain a license.

So, what that means is that if you don't have the required license and you engage in sales finance, the business of a sales finance company, which now includes lending and also includes assignees and servicing and all these things, then the contract is rendered null and void along with the inability to collect, receive, or retain any principal interest or charges on such contracts. I mean, criminal penalties are already applied for knowingly operating without a license, but this idea of now the contracts are voidable adds a whole another layer of what we would call damages because now you're looking at potentially worthless paper on top of the fact that anything you've already put into it is just null and void. It's gone. So, that's a pretty big one for failing to get a license.

Now, we kind of go on to some of the more, I want to call them substantive, but I mean licensing is pretty substantive, but these are the kind of paper type requirements or operational type requirements for the contract and for enforcing the contract. So, one of the big ones is there's now a new required notice in retail installment contracts dealing the complaint procedure that the consumer has with the state regulator, basically saying they can file a complaint, department's contact information. We see this in some other states. Texas is immediately jumping to mind on the lending side where they have that notice that you can contact the OCC, I believe it's called. So, something similar here where it's just telling the consumer they can contact New Hampshire. The problem is, I'm sure the regulator and legislators thought, "Oh, yes, it's a couple words. It's not that bad. These contracts could be pages." But it takes a village to create these things, because you probably have a document vendor, you have to implement it into your system, it has to be coded. All these things that go into a couple sentences are pretty significant.

So, even just one notice can vastly change how you have to approach giving these contracts. A big one that I'm going to ask Brooke about after I get through all this, but I thought this was very interesting, is that the state expanded the definition of cash sale price. So, that price that would normally be shown in the itemization for the cash sale of the vehicle, it used to be very broad in New Hampshire, had very specific examples of what went into the cash sale price. Now, it's been updated to specifically mean the price at which the retail seller offers to sell the vehicle for cash in the ordinary course of business, raising questions about the inclusion of dealer fees and other charges. And now on top of that, there are now new itemization requirements including a description of amounts and description of the fees of prepaid finance charges and the principal balance of the loan.

This is just like a cascade here. The law also introduces new documentary fee regulations, clarifying that only lawful fees paid to public officers for filing and recording instruments securing loans are permissible. So, we used to have this definition where the cash sale price included all these different fees. Now, it's very limited to the amount a cash customer would pay. And on top of that, there's some new provisions around how to disclose these fees. That for anybody who's been listening to our podcast, like you know the question is going to trigger for Brooke as the CARS rule person, but I'm going to ask her when we're totally set with this about some similarities there.

There needs to be a notice of assignment of the obligation within 15 days, which is an interesting one. Most states don't require that for example, the dealer specifically notify the consumer of the assignment. Usually it's on the paper, but there's not an outright obligation to send a separate notice of this. Now New Hampshire has one. They did clarify in some FAQs, and I'll describe that a little bit later, that it doesn't apply to securitization necessarily, but there's even some questions there about what that means. But anyway, there's just yet another requirement, and this is on the commercial side, that's, I mean, you're notifying the consumer of a commercial transaction. It's an interesting requirement.

Finally, I'm sure you're all like, "Finally." Finally, there are some right-to-cure and other post-default notice requirements. So, there is a new right-to-cure letter obligating licensees to send a written notice of default to the buyer at least 10 days after the default and providing a 21-day period for the buyer to cure the default. And the law also specifies the content and timing of notices of disposition and explanations of calculation after the disposition of possessed vehicles. So, the types of things that would normally be regulated by the Uniform Commercial Code, now there are provisions in the New Hampshire law and they do vary slightly. So, there is a little bit of a difference there. Additionally, the lean release, the release of the lean that the finance company has, must occur within 21 calendar days of payoff and the continuation of interest after repossession is prohibited. So both those create some very interesting problems, honestly, because the releasing the lean within 21 calendar days, it's a shorter period. Then the continuation of interest idea for this law notably doesn't give the consumer a right to reinstate, or pay the past due amounts and get the car back and just have the contract continue as it was and pretend none of this ever happened. We go happily continuing to pay the contract.

But a lot of finance companies do offer that. They offer the right to state as a consumer-friendly thing, so you don't have to pay the entire right to redeem and just end the contract. But now they're saying you can't have interest after repossession, so you've got this period where the consumer is just kind of getting free credit after it's repossessed before a finance company may offer a generous right to reinstate.

It's strange to impose that and it probably makes finance companies think, like, "Okay, so is it worth giving the right to reinstate if we can't charge any interest, and also if there's potential problems with it? If we do it even remotely wrong or some technical glitch happens, then we violated the law." That's kind of the quick rundown of the requirements themselves. I guess I'll close my thought with retail installment sales acts. It's kind of a running joke within our compliance group. These statutes came around usually in the sixties or seventies and they have not changed. Some of them you look at the prior history and it's like, "What does this mean?" And then you look down, it's like, "Oh, it's 60 years old." And it's never been thought of again. It was just kind of put on paper and forgotten about. We don't usually see wholesale changes to motor vehicle or a general retail installment sales acts like this. So, that's one reason why it's notable in addition to all the things it does.

But Brooke, kind of going off that idea of state RISAs and our experience with them, as the litigator on the phone, how much litigation do you see under state RISAs and what are the typical claims?

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**Brooke Conkle:**

Yes, it's real interesting, Chris. As you mentioned, RISAs are kind of those laws that are kind of forgotten about in a lot of cases because they are so old, because they don't see a lot of significant changes. When we see litigation, really, it's not under the RISA itself, it's under the State Consumer Protection Act, and really using the requirements of the RISA as a springboard for a Consumer Protection Act claim, because as we all know, there has to be a hook for attorney's fees, and usually that's found in the State Consumer Protection Act.

So, when I look at sort of the new changes to the New Hampshire RISA, these are significant, and they're going to get plaintiff's lawyer's attention, specifically, the definitions make a big difference for the auto finance companies, but it's the requirements that you listed out that are going to make a difference for plaintiffs' lawyers. That's really where we are probably going to see the action in New Hampshire is, did the auto finance company give the correct and appropriate disclosures at a notice of assignment? Did that happen? What about the right to cure and other default notice requirements? Were those followed? Those potential violations are going to be a springboard for a potential Consumer Protection Act claim.

So, Chris, as we talked about, this law has, interestingly enough, a retroactive date. Luckily, we hear about it in August, and hey, what do you know? It actually was in effect July 1. So, how often does that happen? And what are regulators doing like all of these new changes that have sort of been foisted on the industry?

**Chris Capurso:**

Yes. It's funny. Anytime there's a new law, as lawyers, we always go to see what the effective date is, and it's like six months from now. Oh no, I mean, that's pretty quick. A year from now? I mean, that's better, but it's still pretty quick to implement all the things we kind of discussed earlier, coding, getting new forms, all those things. You kind of hope you have a little bit more time than that. I don't know if I've ever opened up a law, looked at the effective date, and it was a month ago. I think that's a new one for me personally. It's weird.

There was a reason for the weirdness because they had proposed the bill, and the New Hampshire banking department specifically requested that the legislature delay the effective date of that new law until January 1, 2025, which, would give the five, or well, because it was signed on August 2, four months, but certainly better than negative one month. But they didn't follow that. They didn't respond affirmatively to the banking department's request. My understanding is that was based on a fear that going back in and changing it might kill the bill. So, they just let it go. It seems like a pun, to be honest. It's like, "Well, the legislature's like, oh, we'll get the bill passed, it's your problem." And the banking department, to their credit, has tried to come up with ways to kind of soften this blow of a retroactive effective date because, one, they said they would engage in, "outreach and education." Those are in quotes, HB-1243 until January 1, 2025. And kind of, second, to go along with that, they've created what's called a no-action process where affected industries and companies can contact them in a no-action letter specifying which parts of the law are particularly burdensome, and they may not be able to implement until a certain date and providing that date, typically January 1, because that's the date when that education and outreach is kind of a default end.

It's an interesting process. We've helped some clients with these no-action letters, and it's an odd one because it's the type of advocacy that would usually be reserved for a notice of proposed rulemaking, like the CARS rule, or something that hasn't gone into effect yet where you can kind of comment on provisions and be like, "Oh, this is very burdensome," or "This doesn't make sense," or any of those types of things. This is a response to a law that is on

the books. It's not under debate. It is there. It's a very strange thing writing a letter. You want to advocate and be like, this requirement doesn't make sense or this definition doesn't make sense. But the law is there. Fortunately, the banking department has taken some of those letters where people have had the more advocacy points and tried to release Q&As to explain certain things.

I mentioned one of them earlier with the idea of the securitization and do you need to send a notice of assignment when you securitize. They've clarified some other new things. For example, they've clarified that notices required by the Act can be included as an addendum to the retail installment contract until new forms are made. So, that complaint notice I was talking about that takes a while to implement. You can put it on a separate page for now and just include it with the deal jacket, just to get through until you're able to get the whole thing implemented.

Additionally, the department provided guidance on the definition of some of the terms such as principal, total interest charge for the period of such loan, terms that are used in the law that are like, what does this mean? They're trying to provide some clarity on it, and they've also outlined some responsibilities for ancillary product refunds. But as I said, the law, still, it exists. It's already there. There's no fighting it. A lot of this is an effort at clarity, and it's just a very odd situation. So, you've got no action letters going out, companies trying to tell to just take a X number of months to do this one, X number of months to do this one, while also trying to see clarity on provisions that they are technically already subject to. So, it's an odd situation.

But the final thing I wanted to ask Brooke about, because I feel like the CARS rule runs through every single one of our podcasts, and with good reason, it's a very important rule. I described that idea of the definition of cash price and how that's changed. And talking about how certain fees aren't included or are included. Does not sound anything like the idea of the offering price in the CARS rule.

**Brooke Conkle:**

Does it sound anything like it? Absolutely, it does. Chris, last month we talked to Chris Carlson from our state attorney's general practice here at Troutman, and we really talked about sort of the kind of tag team efforts at the federal and the state level. You can see that clearly in action right here. New Hampshire is defining cash sale price as the price at which the retail seller offers to sell the motor vehicle for cash in the ordinary course of business. This echoes of the CARS rule heard loud and clear here. In addition, the new itemization requirements, including the description and amounts of prepaid finance charges and the principal balance of the loan.

All of these are shades of the CARS rule left and right. And so while it may not be effective at the federal level, you see New Hampshire high-fiving the FTC here and saying, "It may not be the law at the federal level, but we agree with you wholeheartedly, and we're going to make it effective here in the Granite State."

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**Chris Capurso:**

Just imagining that party of the regulators, just high-fives all around. Well, that'll wrap up today's podcast. So, thank you to our audience for tuning in. Don't forget to check out our blogs where you can subscribe to the entire blog or to just specific content you find most helpful. That's the [ConsumerFinancialServicesLawMonitor.com](http://ConsumerFinancialServicesLawMonitor.com) and the [TroutmanPepperFinancialServices.com](http://TroutmanPepperFinancialServices.com) blogs. While you're at it, why don't you head on over to [troutmanpepper.com](http://troutmanpepper.com) and sign up for our Consumer Financial Services mailing list so that you can stay abreast of current issues with our insightful alerts and advisories and receive invitations to our industry insider webinars. Of course, please mark your calendar for a great new episode of [Moving the Metal](#) that will be released in two weeks. We've already completed our hiatus for spooky season. We had to prepare, but now we're back to every two weeks. So, be on the lookout for that and until next time.

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