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INSTALLMENT SELLING IN COLORADO AND NEEDED LEGISLATION

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Installment selling is generally understood to mean the process of selling goods or services, with or without immediate part payment, on a contract by which the purchaser agrees to pay the purchase price in regular, periodic installments, either to the seller or to some other agency which may acquire the deferred payment contract.

While this form of selling was known and used in America to a limited extent a century and a half ago, it has enjoyed significant popularity only during the last thirty years. The extension of installment payment techniques to a wider field of consumers is attributable to a combination of circumstances. The automobile, the electric washer, and the suction cleaner was introduced and perfected during the period immediately preceding World War I. The war was accompanied by a substantial increase in real wages, which brought these goods within budgetary reach of a large part of the population. But the expansion of sales was, at the same time, limited by war-time restrictions on production, by disruptive price changes between 1919 and 1921, and by inadequate facilities for financing installment sales. The exploitation of this new market was, therefore, largely postponed until after 1921, when the rapid growth of installment finance agencies made possible a substantial expansion of credit sales of these goods. American inventive and productive genius has, in succeeding years, added numerous other mechanical gadgets to the consumers buying lists, and the installment payment device, plus modern advertising, has eased such goods into millions of American homes to the joy, comfort and well-being of the great majority of us.

When we consider installment selling, we are in the realm of big business. I have touched briefly upon its beginning in America. A few statistics show its present magnitude. As of December 31, 1950, the last full year for which figures are available, total installment credit—not total consumer credit which would include single payment loans, charge accounts, etc.—but total installment credit amount to $13,459,000,000. This is broken down into installment sales credit, with which this article deals, of $7,904,000,000, and $5,555,000,000 in installment loans. One further breakdown is pertinent. Installment sales credit is made up of $4,126,000,000 of automobile paper and $3,778,000,000 in other forms of installment sales, i. e., furniture, jewelry, appliances, etc. The year 1951, through November 30, was running ahead of 1950.

It is not surprising that a business which has grown so tremendously during a comparatively few years should experience some growing pains. If it were that and nothing more, the hands-off legislative policy of the pre-thirties would continue to be justifiable. In late years, however, it has become generally recognized that the stupendous growth of consumer credit since 1921 brought new forces to bear on our national economy. These forces, while not alone sufficient to *direct* our economy, did possess power to materially *accentuate* tendencies toward an increase or decrease in the nation's purchasing power. Such influence could not be harnessed by the individual action of forty-eight state legislatures; it called for control by the central banking system which had its fingers constantly on the pulse of the over-all national economy and possessed authority to liberalize or restrict such controls as the needs of the moment required in the interest of economic stability. If World War II had not intervened, this call for federal treatment of the problem would undoubtedly have gone unanswered for several years at least. However, when it appeared that war was inevitable and business as usual must soon be abandoned, Washington wisely included the regulation of consumer credit in its fiscal and economic program. This action took form in Regulation W, of the Federal Reserve Board, issued September 1, 1941, under a Presidential order of the preceding month. Several times amended, Regulation W exercises control over installment financing, principally through its regulation of the amount of the down payment and the time of repayment. The federal regulation relates principally to the monetary and economic phases of the business in their relationship to the national economy. State legislation, on the other hand, should be remedial in character. It should be directed toward balancing the bargaining power between the individual installment buyer and seller for the same reasons that have prompted the majority of states to protect the patrons of cash-lending agencies from the more experienced lenders.

RECENTLY ENACTED INSTALLMENT SELLING LEGISLATION.

Social policy in its relation to installment selling has been expressed in a wide variety of legislation in the United States. In some states, the parties to the installment contract are governed simply by the laws which apply to commercial transactions generally, i. e., the statutory and common laws relating to frauds, negotiable instruments, sales, etc. In other states progress beyond this initial stage has been made in varying degrees. Specific instruments of security used in credit selling (conditional sales contracts, chattel mortgages, wage assignments, etc.) have been made the subject of special legislation designed to eliminate certain practices and encourage others. However, much of the legislation of this type predates either the period of general extension of installment credit to virtually all classes of consumers or the full awakening of social consciousness to the need for protecting some citizens against others in commercial bargaining.

Where such legislation applies to all installment transactions, irrespective of the amounts involved, the status of the buyer, or the types of goods purchased, it is seriously in need of re-examination today.

In recent years legislative emphasis in this country has been slowly moving toward the further protection of at least certain classes of installment buyers in their purchase of the modern necessities of life, such as the automobile, household goods and appliances. Being in a stage of flux, there is little unanimity in respect to what form state assistance should take. There are those who advocate minor adjustments in our existing law. Some conform to the premise inherent in most of our general laws that, given a right and remedy, the individual can and should enforce his right in court. This group contends for a "disclosure law", i. e., a law which compels the seller to make full disclosure of the principal provisions of the installment agreement and which expressly forbids the use of objectionable contract clauses. Others contend that the vast majority of consumers are poorly equipped to avoid the infliction of a wrong or obtain its redress even though the unethical seller acts in defiance of law. The last-named group advocates an extension of the protection to include licensing and supervision of the industry by a state administrative agency.

Installment selling legislation in this country applies only to installment transactions in which security is taken or title reserved by the seller for the payment of the purchase price. This security is taken in one of several forms. Most popular is the conditional sales contract. A few states, mainly because of early judicial prejudice against the conditional sales contract, favor the use of the chattel mortgage to secure payment of deferred balances. Colorado is in this latter group. Time selling is carried on under the bailment lease in Pennsylvania.

LEGISLATIVE NEEDS IN COLORADO.

In 1951, the Retail Motor Vehicle Installment Sales Act was adopted by our Legislature. It was logical that the first step, and in fact the only step taken to date by Colorado to regulate retail installment selling, occurred in the field of car sales, as it was this field in which abuses were most prevalent.

Agitation for remedial legislation in respect to other subjects of installment sales and the revision of our Chattel Mortgage Act can be expected to develop in time. The occurrence of one of two events, 1) *unemployment* perhaps resulting from peace-defense switchovers, or 2) *over extension of credit,* even in an inflationary cycle, in face of the large installment debt outstanding, could hasten public awareness of the legislative needs in these two areas. I wonder how significant an economist would view reliable weekly reports showing a repossession rate of approximately ten percent of cars sold?

We know that in Colorado, conditional sales contracts are frowned upon as secret liens by our courts, and security in time sales is therefore taken in the form of a chattel mortgage. The inadequacies of our Chattel Mortgage Act are too well known to merit extended consideration. In the main, that legislation speaks of 1917 and antedates the widespread popularity of installment selling and the peculiar problems created thereby. No statutory form of mortgage is provided and one-sided draftsmanship of the securing instrument naturally results. This is restricted only by the slowly developing case law process. The most glaring inadequacy of the Chattel Mortgage Act is its complete silence in respect to foreclosure procedures. This omission is much more serious to the buyer of consumer goods, i. e., washers, furniture the automobiles than to other classes of mortgagees better situated to protect themselves.

So far as immediate need is concerned, the overhauling of our Chattel Mortgage Act should come first. The second step could be a fairly simple retail installment selling act, applicable to the installment selling of goods at retail within certain monetary limits.

CHATTEL MORTGAGE ACT REVISION.

In connection with the Chattel Mortgage Act revision, the American Law Institute and the National Conference of Commissioners on Uniform State Laws offer the Uniform Commercial Code. Article 9 thereof deals with the so-called secured transaction which is pertinent to this discussion. The House of Delegates of the American Bar Association voted its approval of the Code on September 20, 1951, and it is being introduced in the current session of the New York State legislature. The Foreword of this publication states in part that, "this Code is set up to read upon the business transactions of today's commerce, not that of 150 years ago."

The proposed Uniform Commercial Code would replace existing chattel mortgage and conditional sales acts as well as statutes relating to factors liens, assignments of accounts receivable, trust receipts, etc. It would also replace the Uniform or other Acts dealing with negotiable instruments, warehouse receipts, sales, bills of lading, stock transfers, bond collections, etc.

Article 9 of the Uniform Commercial Code is not intended as a complete substitute for small loan acts, retail installment selling acts and the like. Such acts may provide for licensing and rate regulation, as does the Colorado Small Loan Act of 1943, and specify contract forms, as does the Colorado Retail Motor Vehicle Installment Sales Act of 1951. However, Article 9 is intended to supersede such acts in respect to filing procedures, rights on default, the status of after acquired property and the like. Special consideration is given in said article to buyers of *consumer goods,* i. e., goods used or bought for use primarily for personal, family or household purposes. Coverage is also intended for secured transactions concerning *equipment goods* if used or bought for use primarily in business as well as *farm products* and *inventory goods.*

Because of the inadequacies of Colorado law upon the occurrence of default, I will consider only Part 5 of Article 9 dealing with defaults and, in the main, to the extent that the default section concerns installment sales of consumer goods.

Under the Uniform Commercial Code, when a debtor is in default under the security agreement, the secured party may reduce his claim to judgment. He may in addition:

1. Foreclose the security interest by any available judicial procedure;

2. Take possession of the collateral without judicial process if possible without breach of peace. Without removal, a secured party may render equipment unuseable, prepare it for sale and dispose of the collateral upon the debtor's premises if he acts within a reasonable time.

3. Sell and recover a deficiency. He may dispose of the collateral in its then condition, or after any commercially reasonable preparation. The proceeds of the disposition shall be applied in the order following:

a) reasonable expenses of retaking, holding and preparing for sale;

b) The satisfaction of the indebtedness secured by the security interest under which the disposition is made;

c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before disposition of the proceeds is completed.

The debtor is entitled to any surplus remaining and is liable for any deficiency.

The above requirements do not differ materially from present practice in Colorado, except that a surplus is a rarity. Due to unrestricted financing, insurance packs and careless methods of sale, a deficiency is more often the rule.

The Uniform Commercial Code suggests a few badly needed safeguards in connection with sales on default. Unless collateral is perishable, or threatens to decline speedily in value, or is of a type customarily sold in a recognized market, the secured party must give the debtor, and any other secured party who has an interest and is known to the party making the disposition, reasonable notice of the time and place of any public or private sale and appropriate notice of any other intended disposition. And by notice is meant mail notice and not notice in some obscure legal paper.

The secured party may buy at any public sale. If the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, the secured party may also buy at a private sale.

In case of a purchase money security interest in consumer goods, if the debtor has paid sixty percent of the cash price and has not signed, after default, a statement renouncing his rights, a secured party who has taken possession of collateral must dispose of it by sale in accordance with the procedures last reviewed. However, if the secured party fails to sell within 90 days after taking possession, the debtor may recover in conversion. He may also proceed under another section of the Article which applies whenever the secured party is not proceeding in accordance with the provisions relating to default. That is to say, disposition may be ordered or restrained by the Court upon appropriate terms and conditions. If the disposition has occurred without notice to the debtor, the latter is entitled to recover any resultant loss. If the collateral is consumer goods, the debtor has the right to recover, in any event, an amount not less than the credit service charge or time price differential plus ten percent of the cash price or principal amount of the debt.

WRITTEN NOTICE IS REQUIRED.

Where the debtor has paid less than sixty percent of the cost price, a secured party in possession, after default, may *propose* to retain the collateral in satisfaction of the obligation. He must give written notice of such proposal to the debtor and to any other party known to have a security interest in the collateral. If objection is registered by the debtor or other person having a security interest in the collateral within thirty days of such notification, the secured party must dispose of the collateral through sale; but in the absence of such timely objection, he may hold the collateral or dispose of it free from the requirements of the Act. Of course, the secured party cannot accept the collateral in discharge of the obligation and later recover a deficiency. Likewise, the debtor by acting timely before other rights have vested, may reclaim the collateral by tendering payment of all sums due as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing for disposition.

One further provision merits mention. Installment paper generally passes from the hands of the retail seller to a sales finance company or bank. An agreement by a buyer of *consumer goods* that he will not assert against an assignee of the paper any claim or defense arising out of the sale is not enforcible by any person under the suggested legislation. In other words, if such a buyer of consumer goods, as part of one transaction, signs both a negotiable instrument and a security agreement, even a holder in due course of the negotiable instrument is subject to such claims or defenses if he seeks to enforce the security interest, either by attaching or levying upon the goods, in an action upon the instrument. This is not so in respect to the other three classes of secured transactions involving equipment, farm products, or inventory.

I confess that I view remedial legislation of this sort from the consumer's viewpoint. Looking at enacted legislation in other States, one can find safeguards for the consumer which do not appear in the Uniform Commercial Code. The Code, is, of course, a compromise between the conflicting interests represented on the committees instrumental in its drafting and the bodies extending to it their approval. I do believe the Statutes of a number of States, particularly Maryland, Pennsylvania, New York, Indiana, and Wisconsin, merit the consideration of any group which may hereafter study the Code for contemplated adoption in Colorado.

NEEDED RETAIL INSTALLMENT SALES BILL

The second step in a legislative program involves the drafting of a Retail Installment Sales Bill.

The following is offered as the essential requirements of such a Bill:

a) *Checks on Over-Extension of Credit*

The greatest aid in restricting installment credit within reasonable bounds has come through Regulation W of the Federal Reserve Board. Because federal controls on over-extension of credit are uniform and changes can be made readily as conditions warrant, it is to be preferred over the more rigid state control. Any well-rounded state legislation will, however, bear down upon over-extension of credit at several points and aid in its control. Full disclosure of credit terms and requirement for truth in advertising are tools of this category. So also are the provisions restricting the writing of unwarranted insurance and forbidding onerous contract terms, all of which force the seller to be more selective in extending credit.

One direct measure to discourage excessive credit granting is suggested by the English Hire-Purchase Act of 1939. That Act permits the purchaser to terminate the agreement at any time by returning the goods so long as one-half of the purchase price is paid. He, nevertheless, remains liable for damages in case he has failed to take reasonable care of the goods.

b) *Full Disclosure of Contract Terms*

The contract evidencing the installment purchase should be written in simple, non-technical language and should display prominently all cost elements which go to make up the total time price. A copy of the contract should be delivered to the buyer at the time of execution. Receipt for such delivery might well appear in bold type immediately above the space provided for the buyer's signature. The purpose served by the requirement of full disclosure is materially impaired if the copy is furnished at some later day.

c) *Forbidden Contract Provisions*

The Maryland law emphasizes the requirement of full disclosure of the terms of the installment sales agreement by forbidding any seller, sales finance company, or holder, from taking or receiving any instrument from the buyer which contains any blank spaces (except serial numbers) to be filled in after such instrument has been signed by any party thereto.

It would appear particularly important, when regulating business transactions between parties not on equal footing, to forbid the taking of warrants or powers of attorney to appear and confess judgment in the event of the buyer's default, particularly where agreed upon before a cause of action has accrued.

A common provision found in installment sales agreement forms vests in the seller or holder the right to declare the entire balance due when he deems himself insecure for any reason whatsoever. The operation of such a provision has been generally restricted by the courts to those cases where reasonable grounds for such fear exist—mere apprehension is not enough. However, many unadvised buyers naturally fail to question the ostensible meaning of the provision, and because they are unable to pay the entire balance in one payment, they voluntarily relinquish possession of the goods. Because of the possibilities of abuse reposing in such acceleration provisions, some laws flatly forbid its use. If acceleration is to be permitted, it should be based upon certain express contingencies, such as default in the contract or other objective act rather than upon the subjective fact of seller's personal view that he is insecure.

Buyers are sometimes persuaded to participate in balloon contracts, that is, contracts with regular small periodical payments terminated by a single large payment. The seller's motive in framing this type of contract may be one or more of the following:

1) To facilitate the sale of the goods through the inducement of initially small periodical payments.

2) To enable the seller to take advantage of the buyer's ultimate default and repossess the goods.

3) To profit by the necessary refinancing of the contract upon due date.

Unless the balloon balance is prohibited by law, many buyers are eventually thrown upon the mercy of the seller or contract holder.

Forcible entry, without notice or process of law, and waiver of damages resulting, are sometimes provided for in installment sales agreements and are consented to unwittingly by buyers. The seller might better be protected against dishonest buyers by streamlining of the replevy process than by subjecting all buyers to such summary treatment for every minor default which occurs.

The drafters of an installment selling bill should not overlook a common contract provision providing that a person acting on behalf of the seller or holder is treated as, or deemed to be, an agent of the buyer. Such dual capacities should be discouraged because of the conflicting interests involved. Nor should the seller be permitted to relieve himself of liability for acts of persons representing him.

Whether a seller should be allowed to take an assignment of wages as further security is also questionable. If allowed, safeguards against abuse should be provided.

d) *Insurance Regulated*

Customarily, insurance is required to protect the seller from the ordinary hazards to which the security is subject. Because the business convenience of the seller is best served by his control of the writing of the insurance, authority to place and control it is usually reserved to him in the installment sales agreement. The seller as a rule obtains the commissions arising from the writing of the insurance. The seller is thus placed in the position of determining, in the first instance, whether insurance is necessary, and if so, the amount, type, and term of the coverage to be written. Judgment, in many cases, is swayed by the financial interest involved. This is not a healthful situation. The problem exists in most debtor-creditor relationships where security is involved and, in fact, is more serious in the real estate mortgage field where larger sums are involved. Attack upon the problem may best come through necessary revision or more rigid enforcement of the insurance statutes regulating insurance agents. The possibilities of abuse, however, are numerous and should be recognized. Such controls as are possible should appear in the installment selling law. It is suggested that particular consideration be given to the following proposals:

1) That the buyer be given the right to contract for his own insurance if he so elects. In so doing he would be compelled to satisfy the requirements specified by the seller respecting the financial condition of the insuring company but such requirements should be, at the same time, reasonable. Discrimination against mutual companies should not be permitted. A lower scale of commissions rather than a question of security often prompts such discrimination.

2) Where the insurance is written by or through the contract holder, the amount, cost, type, and duration, should be clearly stated in the installment contract. A duplicate of the policy or a certificate of insurance should be furnished the buyer, within a reasonable period, for the purpose of evidencing the actual writing of the insurance in accordance with the initial agreement, as well as to provide the buyer with more detailed information concerning the terms of the policy issued.

3) It should be provided by statute that any surrender or other refund, and all dividends received under such policy, should be remitted to the buyer or credited to his account.

e) *Add-Ons Regulated.*

Add-on is a method of obtaining additional security. It is most often used in the sale of furniture and household appliances. If the buyer, while making payments under an installment sales contract, purchases additional goods, the seller may, through the add-on provision of the original contract, consolidate the purchases. If the buyer subsequently defaults, the seller, in absence of statutory restrictions, may provide for the right to repossess all the goods sold even though sufficient money has been paid in at time of default to cover the earlier purchases. Some laws flatly prohibit the use of the add-on device because of the obvious abuses which can be made of it. The treatment accorded the subject by the Maryland law is recommended in the event add-ons are allowed.

Add-ons are permitted by the Maryland law if the original installment sales agreement so provides. The seller must at the time of the additional purchase, deliver to the buyer a statement containing information with respect to the original purchase. The statement shall show the balance before and after the add-on, the payments agreed to be made and the number of additional months required to complete the payments.

Future payments shall be considered as allocated among each of the separate purchases in the same proportion which the original cash price of each bears to the total cash price of all goods to which the seller has retained title. Actual allocation need not be made unless seller repossesses or attempts to repossess the goods. When the amount owing on any separate purchase has been fully paid, the goods so paid for shall become the absolute property of the buyer and shall not be subject to repossession for any subsequent default on the agreement. The buyer is also given the privilege of prepaying the amount due on any of the separate purchases, and in case of repossession may redeem any of the separate purchases by payment of the amount due on such purchase alone.

f) *Fair Allowance for Prepayment.*

Occasionally the entire balance due under the installment sales contract is paid or refinanced prior to the final installment date. The finance charge is, in most sales finance transactions, handled as a discount and based upon the assumption that the contract will run for the full term. As thus computed, it is included in the original unpaid balance. Naturally, when this assumption is altered by payment or refinancing of the indebtedness prior to maturity, a refund or credit of part of such charge is due the buyer. Sellers who look to the financing rather than the sale of merchandise for profits, overlook, and if pressed, even refuse to give refunds under such circumstances. Some sellers, on the other hand, accept the opportunity to enhance customer good will and voluntarily make partial refund of the finance charge. The buyer's rights to some refund under such circumstances cannot in good equity be disputed, and installment selling legislation should protect the buying public against unfair forfeitures in this connection.

Before considering what proportion of the finance charge should be refunded to the buyer in the event of prepayment, it is well to recognize that parties other than the buyer and the seller are usually involved in the transaction. The great bulk of installment sales are financed through third parties. To the sales finance company, or the industrial or commercial bank, which purchases installment paper from the seller, the dual transaction is for all practical purposes similar in effect to a cash loan made by the financing agency direct to the buyer. The paper received by such financing agencies represents principal plus finance charge. The accounting methods followed by such agencies in segregating the earned from the unearned finance charge should suggest means of determining the amount of the rebate which should be made to the buyer in case of prepayment of his account for reason that it is the remainder, namely, the unearned portion of the finance charge, to which the buyer makes claim. A trade practice, recognized and allowed within reasonable bounds by the administrative authorities of Indiana and Wisconsin, is that of permitting the retail seller to retain a portion of the finance charge to compensate for losses incurred through sales on the installment plan. Where this practice is indulged in, some contribution to the amount of the refund for prepayment should be required of the retail seller.

g) *Delinquent and Refinance Charges Regulated—Short-term Delinquences, Grace Periods, Penalties.*

Procrastination rather than inability or intentional delay undoubtedly causes the greater part of short-time delinquencies in the installment-selling business. Being of brief duration, they do not seriously inconvenience or constitute a financial burden to the contract holder. Late payments are offset to some extent by the prepaid installments of other buyers or by the same buyer at other periods. Long-standing custom would indicate the desirability of recognizing this failing on the part of the installment buyer by providing for a short grace period before delinquent charges would attach. When subsequently applied, delinquent charges should be in an amount sufficient to discourage the habit of making late payments and to defray the extra cost incurred by the seller because of the delinquency. However, such charges should not be sufficiently profitable to the seller to induce him to delay making the usual collection efforts. The buyer's attention must be directed to the fact that late payments will subject him to extra charges.

h) *Persisting Delinquencies.*

Continuing delinquencies ultimately result in contract modification, refinancing, or repossession. It is the opinion of many courts that when the debt is refinanced by drawing a new contract extending the term and reducing the payments, the transaction becomes, like a cash loan, subject to statutory interest restrictions. Hence we find much of this type of refinancing handled through affiliated concerns. New financing charges are made, and unless the law is otherwise adequate, the unearned finance and insurance charges under the original contract are sometimes "overlooked" and forfeited. Some sellers directly refinance the deal themselves. In the course of so doing, the flat finance charge is often repeated without regard to past charges. The threat of repossession renders the delinquent buyer amenable to such treatment.

The above are, in the author's opinion, the main subjects to be considered for inclusion in Retail Installment Selling legislation. Others may add or delete depending upon their viewpoint or extent of interest. I would not at this time advocate the regulation of the spread between cash and time price, i. e., the financing charge, as is done in Indiana and Pennsylvania, for several reasons. First, a simple rather than complicated legislative bill is desirable if there is to be any practical chance for enactment in Colorado. Second, there is a deep-seated prejudice relating to interest restrictions in this State. Regulation of interest on finance rates has been achieved only to a limited extent in Colorado, that is upon small loans of $300 or less, where the interest rate is 3½% per month upon the first $150 of the loan and 2½% on the remainder, and industrial bank loans where the effective permissive rate is approximately 20% per annum. Otherwise, parties to credit transactions are free to agree to any rate they may see fit. Unless a complete approach to the problem of interest rates be undertaken, it would seem unfair to single out the financing of installment sales for treatment. Third, an uneven and therefore inequitable enforcement effort would result in view of the historic reluctance of our Legislature to appropriate adequate funds to regulatory departments. Fair contract terms, full disclosure and filing of rate charts with the department in connection with the licensing program is the most than can be expected.

Enacted Motor Vehicle Installment Financing Act of 1951

I earlier mentioned the Motor Vehicle Installment Financing Act of 1951 which became effective July 1, 1951. A quick review of its provisions is in order as it does reflect a substantial step forward.

The Motor Vehicle Act which was H. B. 332 of the 1951 legislative session is primarily a licensing, disclosure, and refund statute. The licensing feature was amended in 1952 to release automobile dealers handling their own paper when less than fifty deals were handled a year. They remain subject, however, to other provisions of the Act.

Licensees are required to file their maximum rate charts with the State Bank Commissioner.

Under the disclosure and regulation sections a completed contract must be furnished the retail buyer; confession of judgments or power of attorney therefor are unenforceable; delinquency charges are restricted to 5% of the amount in default or $5.00 whichever is the lesser, and cannot be imposed unless the delinquency continues for ten days. Attorney fees, based on fifteen percent of amount due, is provided when collection is referred to an outside attorney, and upon request, statement of account must be rendered.

The installment sale contract must include a complete breakdown of the transaction except that where insurance is included, the secured party is given thirty days to break down the lump finance and insurance charge and to furnish a copy of policy. While good arguments can be advanced for lumping finance and insurance charges, it is one weakness in the Act which in time must be corrected.

The greatest benefit given the buyer under the Act is contained in Section 7. A buyer paying off his indebtedness in advance of its maturity is entitled to a return of a proportionate part of the financing charge after fifteen dollars is first deducted. This deduction represents acquisition costs. Insurance may be cancelled upon the short rate basis.

The Act is silent in respect to re-scheduling the retail installment contract in event the payments must be deferred, the due date extended, etc. The initial draft of the bill contained a provision restricting fees and interest charges in such cases, but the section was dropped in pre-introduction compromises.

The Act authorized the employment of two examiners to administer and enforce the Act, but no appropriation was made to implement the authorization. A small loan examiner is spending only part time on the work and only a fraction of the concerns subject to the Act are licensed thereunder despite a sizable penalty for failure to obtain a license. Lawyers should familiarize themselves with Section 9 (b) of the Act. It is therein provided that if any person shall willfully violate the disclosure and refund upon prepayment sections, he shall forfeit the interest or finance charge as well as delinquency or collection charges.
