

January 1951

The Retail Motor Vehicle Installment Sales Act

Louis A. Hellerstein

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Louis A. Hellerstein, The Retail Motor Vehicle Installment Sales Act, 28 Dicta 229 (1951).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Under Section 7, amending Section 15, *Records*, adoption records and papers will be considered *confidential records of the court*, striking the former provision for *sealing*, and such records shall not be *open to public inspection unless by order of court*. A provision also is added by this section that only one docket fee will be assessed in cases involving more than one child.

THE RETAIL MOTOR VEHICLE INSTALLMENT SALES ACT

LOUIS A. HELLERSTEIN
of the Denver Bar

By the enactment of the "Retail Motor Vehicle Installment Sales Act"¹ Colorado became the eleventh state to enact specific legislation covering the installment sale of motor vehicles. The act, which becomes effective on July 1, 1951, is restricted to *installment sales* of such type of personal property. It does not affect nor legislate upon cash sales nor does it affect installment retail sales of any articles of personal property except *motor vehicles* as defined in the act. Transactions other than retail sales are not affected by the act.

The act covers those engaged in the sale of motor vehicles upon the installment plan and financing institutions who purchase or lend upon contracts resulting from such sales and make collection thereon such as banks, finance and loan companies. An individual selling his car is not affected by the act nor are those banks or finance and loan companies who make loans upon the collateral of such contracts or purchase such contracts, but who do not (prior to default of the seller or borrower) collect the payments upon such contracts.

Motor vehicles generally as covered by the act are passenger cars, trucks, station wagons and motorcycles. Road machinery, tractors and agricultural machinery of a similar nature are excepted from the provisions of the act.

If a sale of a motor vehicle upon an installment basis is involved the act applies even though the form of contract purports to be a leasing or bailment when the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to the value of the property and bailee or lessee is bound or has the option of becoming the owner thereof.

A finance company or a bank which makes a direct loan to a purchaser to finance the purchase of a motor vehicle is not subject

¹ H.B. 332, approved April 12, 1951, Holland's Legislative Service, p. 448.

to the act. In such a case neither is the installment sales contract subject to the act.

The act purports to accomplish the following four principal objectives:

1. *Full disclosure of terms of sale and costs.*
2. *Mandatory provisions for rebate of part of the "time price differential" upon prepayment.*
3. *The limiting of delinquency and collection charges.*
4. *General provisions safeguarding the rights of installment purchasers of motor vehicles.*

Rates, discounts, charges or reserves are not regulated.

LICENSING PROVISIONS

Individuals, partnerships, corporations, and associations or other operating organizations, exclusive of banks, trust companies and industrial banks, who (1) act as principal or broker in the acquiring of retail installment paper from the seller or lend thereon and make the collections upon such contracts from purchasers, and (2) those motor vehicle dealers who retain their own contracts of sale are designated as a "Sales Finance Company" and are required to be licensed under the act. A sales finance company, which makes loans upon such installment contracts or buys such contracts in bulk and does not, in the absence of default by the seller or pledgor, collect the payments, is exempt from being licensed. As stated, banks, trust companies and industrial banks even though they act as sales finance companies and buy contracts or lend upon contracts and make collections thereon are not required to be licensed.

Companies making *direct loans* to finance the purchase of motor vehicles are not required to be licensed.

Motor vehicle dealers who sell their contracts are subject to the terms of the act but are not required to be licensed. Motor Vehicle dealers who retain their contracts are required to be licensed as a "Sales Finance Company".

Applications for licenses are filed with the State Bank Commissioner. No convenience or advantage clause is contained in the act and licenses are automatically issued upon payment of the fee required and the filing of the application. The license for the calendar year or any part thereof is \$100 for the principal office in the state and \$25 for each branch office. All licenses expire December 31st of each year. Changes of locations are endorsed without charge.

The Bank Commissioner is given power to suspend or revoke licenses for various causes after due notice and a hearing. The principal grounds for revocation or suspension are (1) failure to comply with the act; (2) defrauding a buyer; (3) failure to

comply with a written agreement with the buyer; or (4) fraudulent misrepresentation, circumvention or concealment by any subterfuge or device of material matters required to be stated in a sales contract.

It is made a misdemeanor to operate as a "Sales Finance Company" without procuring a license as required by the act.

THE SALES CONTRACT

The act requires the seller and purchaser to enter into a written contract for the retail sale and purchase of a motor vehicle upon an installment plan basis. Such contract must contain all the agreements of the parties, must be signed by the buyer and a copy furnished the buyer at the time of the execution of the contract. The execution of a sales contract in blank is prohibited except that serial numbers or other identifying marks which are not available at the time of its execution may be inserted later.

Each such installment sales contract is required to contain the following numbered items and in the following order:

1. The price of the motor vehicle which is the subject matter of the retail installment contract if the sale were made for cash;

2. The amount of the retail buyer's down payment, stated separately;

(a) The amount of any cash payment; and

(b) The amount of goods given in payment, if any;

3. The unpaid balance of the cash price, which is the difference between items (1) and (2);

4. The cost to the retail buyer of any insurance and any option of benefits included in the transaction, specifying the types of coverage and benefits;

5. The amount of the time price differential;

6. The time balance owed by the retail buyer to the retail seller and the number of installment payments required and the amount and date of each payment necessary finally to pay the time balance, which is the sum of items (3), (4), and (5). The amount of items (4) and (5) may be added together and stated as one sum in the contract, and if so stated, the retail seller or his assignee shall, within thirty (30) days after the making of the retail installment contract, mail or cause to be mailed to the retail buyer at his address as shown on such contract, a statement reciting separately the amount of item (4) and the amount of item (5).

7. The time selling price of the motor vehicle, which is the sum of items (2) and (6).

The above numbered items may be set out in the sales contract or in the mortgage, if desired, or, the contract may be recited in the purchase order while the conditions as to the retention of the lien or mortgage may be set out in a note and chattel mortgage as separate instruments. Many sellers prefer to use a chattel mortgage when making an installment sale which recites the full terms

of the sale as well as the mortgaging or retaining of a lien to secure the balance of the purchase price.

The duty of entering into the required written sales contract and compliance with the provisions of the act relative thereto devolves upon the vendor of the motor vehicle. It is not an obligation of the purchaser or pledgee of such contracts to ascertain that a proper contract is entered into by the seller and buyer; nor is the validity of a note and mortgage affected by failure of the seller to enter into the type of sales contract provided by the act.

If chattel mortgage instruments or other lien instruments are used, full compliance with the chattel mortgage is still necessary. The installment Sales Act does not vary or change the Colorado Chattel Mortgage Act.

COLLECTION AND DELINQUENCY CHARGES

Within the limitations set out in the act, collection charges or delinquent charges are permitted. To be collectible appropriate provisions covering the right to collect delinquent charges or collection expense or attorneys' fees should be contained in the note and mortgage or contract.

The following delinquency charges or collection expenses are permitted by the act:

- (a) *5% of the installments in default or \$5.00 whichever is a lesser amount when such default has continued for a period of at least ten days.*
- (b) *An attorney fee not exceeding 15% of the amount due when the collection is handled by an attorney who is not a salaried employee of the holder of the contract, note or mortgage.*

Unless delinquency has continued for at least a ten day period, collection charges are not permitted. Also, interest upon delinquent installments is not permitted in view of the delinquency charges provided for by the act.

The attorneys' fees permitted are *in addition* to the delinquency and collection charges permitted.

REFUND UPON PREPAYMENT

Since most installment sales contracts contain a finance charge or a "time sale differential" (added to the cash sales price) based upon the period of payment, the act provides for a refund for prepayment. The refund formula set out in the act is what has commonly become known as the "Rule of 78ths". Prior to making such computation of a refund, the holder of the contract is permitted to deduct and retain \$15 as the acquisition cost of the contract.

A buyer has *the privilege of prepayment at any time*. Regardless of the terms of the written instruments, as a matter of law, prepayment in full by the buyer may be made at any time. If the refund is less than \$1.00 none need be made.

The buyer may also elect to cancel the insurance written in connection with the loan and receive cancellation of the unearned premium upon a short rate basis.

PROVISIONS FOR BUYER'S PROTECTION

Insurance—If insurance is included in the retail sales installment contract, within 30 days after the date of execution of such contract, the seller or holder of the contract or mortgage is required to send or cause to be sent to the buyer a policy or policies of insurance or certificate of insurance showing the amount of the premium, the kind of insurance, scope of coverage and the terms, conditions, exemptions and limitations of the contract of insurance.

Insurance can only be written by insurance companies authorized to do business in Colorado.

Statement of Time Price Differential and Insurance—In the event the original sales contract contains a combined figure showing the amount of the time price differential and insurance as one item, then within 30 days from the date of the contract, a statement showing separately the cost of the insurance and the time price differential is to be furnished the buyer.

Confession Judgments—In connection with retail installment sales of motor vehicles no provision for confession of judgment is valid or enforceable.

Complaints—A buyer, having a complaint with reference to his retail installment contract may file the same in writing with the Bank Commissioner. When the Commissioner receives such written complaint, he is authorized to inspect the instruments relating to the transaction complained of.

The act gives the Commissioner the right to issue subpoenas, compel the attendance of witnesses, administer oaths and generally supervise operations under the act. It is presumed that a complaint found to be justified could result in the Commissioner exercising his right to suspend or revoke a license.

The act also provides for the enforcement of subpoenas through Court action if a witness refuses to appear and testify.

Payment of Contract—If a contract of sale or mortgage and note is assigned and no notice is given to obligor thereof, a buyer making payment to the seller or payee named therein, is protected. To protect himself, an assignee should give notice of the assignment to the buyer of actual or intended assignment. The act, however, does not require mandatory notice of assignment of such contracts or notes and mortgages evidencing the balance of such purchase price of the motor vehicle.

Rate Charts—Every Sales Finance Company is required to keep on file with the Commissioner the maximum rate chart or charts in use and numbered for identification.

The "Retail Motor Vehicle Installment Act" is a new experiment in the field of installment sales which has had such a tre-

mendous growth in our country; it fills a need in our state to safeguard the interest of buyers of motor vehicles. It may be necessary in the future to pass legislation covering other fields of installment sales.

The act is a forward step in the interests of the public, founded upon a need that has developed toward legislation of this character. It will be of interest to watch the developments that occur and thereafter determine the need, if any, of any such amendments to make the act and its purposes adequate and effective.

YOUR SPECIAL DISABILITY INSURANCE AND MILITARY SERVICE

In view of the still-pending threat of military service for many members of the association, those who carry the Special Disability Insurance of the Commercial Casualty Insurance Company via the Udry Agency, Denver, will be interested in the following statement of policy from the company:

"The primary purpose of our Special Disability Insurance Plan is to furnish income protection during the period that you are physically unable to perform your usual civilian, professional duties.

It is our understanding that if you enter military or naval service the Government will see that in the event of a disability—

1. Your income will continue.
2. You will be provided with hospitalization and medical care.
3. That National Service Insurance is available to you at exceptionally low rates.

Therefore, should you enter Military or Naval Service, we will arrange to place the coverage provided under this plan in suspense on the following basis:

A. By returning the unearned premium on a pro-rata basis, and

B. Granting you the privilege of applying for *automatic reinstatement* when you are discharged from military or naval service, provided written application for reinstatement is made within forty days after you have resumed the regular duties of your profession.

C. When your Special Disability Policy is reinstated, there will be no back premiums or arrears to pay. Your reinstatement premium will be pro-rated to the next renewal date of the other members of your Society."