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LEGISLATION

RETAIL INSTALMENT SALES—CONTROL OF RETAIL PURCHASES OF GOODS AND SERVICES IS EXTENDED BY NEW STATUTES.—During 1957, the New York State Legislature enacted, and the Governor approved, six bills¹ relating to the regulation and supervision of retail instalment sales, in an endeavor to achieve maximum consumer protection.

Three of these acts² amend the 1956 Sales Finance Company Act, strengthening the powers of the Superintendent of Banks in carrying out investigations on written complaint or on his own initiative, and broadening the requirements for licensing of sales finance companies.

One of the acts³ amends the Motor Vehicle Retail Instalment Sales Act enacted in 1956, regulating instalment sales of motor vehicles, by removing the \$3000 limit, so that sales of all vehicles, new and used, are now subject to regulation. It also modifies the formula for setting a ceiling on refinancing, and clarifies the other provisions of the law in the buyer's interest.

Another of the acts⁴ amends the Banking Law by providing for an extension of the period for which certain loans may be granted, and by modifying the basis for computation of interest charges.

The last statute⁵ in this group of 1957 enactments is the most extensive in scope and effect. This act brings under regulation, for the first time in any state, all retail purchases of goods and services on time,⁶ except motor vehicles which were covered in legislation enacted in 1956.⁷

The act covers three major areas: (1) time sale price transactions, with or without a lien instrument; (2) revolving credit plans; (3) add-on provisions of time sale price transactions.⁸ Transactions on an instalment basis are regulated as follows; as to terms of agreement between buyer and seller by requiring the disclosure of all of the conditions of the agreement and by prohibiting the inclusion of certain enumerated provisions; by forbidding the taking of a contract signed in blank; by imposing a limit on the amount which may be charged for paying the purchase price in instalments; by requiring that buyers repaying their debt before the maturity date shall have a refund for unearned charges.

The act is to be known as the Retail Instalment Sales Act, and is effective October 1, 1957.⁹

¹ N. Y. SESS. LAWS 1957, cc. 594-9.

² N. Y. SESS. LAWS 1957, cc. 594, 596, 598.

³ N. Y. SESS. LAWS 1957, c. 595.

⁴ N. Y. SESS. LAWS 1957, c. 597.

⁵ N. Y. SESS. LAWS 1957, c. 599.

⁶ Message of the Governor, April 17, 1957.

⁷ N. Y. SESS. LAWS 1956, c. 633.

⁸ N. Y. SESS. LAWS 1957, c. 599, page 2116, *Memorandum of State Banking Department*.

⁹ *Id.* §§ 1-5, eff. Oct. 1, 1957; amending N. Y. PERS. PROP. LAW by adding a new Article 10 §§ 401-18; renumbering the present N. Y. PERS. PROP. LAW art. 10 as art. 11 and §§ 350-1 as §§ 450-1, respectively; amending N. Y. PERS. PROP. LAW 64-a by amending the last paragraph thereof to read: "The provisions of this section shall not apply to the retail instalment sale of motor vehicles or goods as defined in articles nine and ten of this Chapter."; amending N. Y. LIEN LAW § 239-i by amending the last paragraph thereof to read: "The provisions of this section shall not apply to the retail instalment sale of motor vehicles or goods as defined in articles nine and ten of the personal property law."; repealing N. Y. PERS. PROP. LAW § 75-a; repealing N. Y. LIEN LAW § 239-1.

A detailed analysis of its provisions follows:

Goods¹⁰ are defined as all chattels personal, other than things in action or money, including goods which at the time of the sale or subsequent thereto are affixed to realty; except those purchased for a commercial or business use for the purpose of resale, or motor vehicles as defined in the Retail Instalment Sales of Motor Vehicles Act.¹¹

Services¹² are defined as all work, labor, and services furnished, for other than a commercial or business use, in connection with the delivery, installation, servicing, repair or improvement of goods, as are services in connection with real property.

In a retail instalment credit agreement or credit agreement,¹³ which is the revolving credit plan as defined and described in the Act, all services are included if furnished by a merchant who is principally engaged in the sale of goods.

A retail instalment sale, or sale,¹⁴ is a sale of goods or the furnishing of services by a retail seller to a retail buyer for a time sale price, payable in instalments, with or without a lien instrument.

A lien instrument is defined as a retail instalment contract, or contract;¹⁵ and a non lien instrument as a retail instalment obligation, or obligation.¹⁶ Specifically excluded from the term obligation are FHA or similarly guaranteed or insured transactions.¹⁷

The statute sets forth specific definitions for cash sale price, time sale price, credit service charge; all relating to time sale price transactions, and service charges as used with reference to retail instalment credit agreements.¹⁸

It is now required that certain provisions must appear in retail instalment contracts or obligations.¹⁹ If the amount of any instalment substantially exceeds the amount of a prior instalment, commonly called a "balloon" payment, notice of this must be conspicuously given in the contract or obligation. A statement of the credit service charge may be expressed as a simple interest rate if it does not exceed a rate of six per cent annum simple interest or unpaid balances from time to time. Insurance charges are limited to the actual cost of insurance, and delinquency and collection charges are set forth in detail.²⁰

The execution of negotiable instruments in connection with a retail instalment contract or obligation is prohibited except where home improvement transactions are involved.²¹ Certain provisions, which in some cases have led to abuse of the buyer may no longer be included in such contracts or obligations.²²

Credit service charges on retail instalment contracts and obligations are limited to \$10 per \$100 per annum where the principal balance is \$500 or less. If the principal balance exceeds \$500, then the maximum charge is \$8 per \$100 on the excess over \$500. Where the credit service charge so computed does not equal \$12, there may be charged

¹⁰ N. Y. PERS. PROP. LAW § 401 (1).

¹¹ *Id.* art. 9 §§ 301-11.

¹² *Id.* § 401 (2).

¹³ *Id.* § 401 (8).

¹⁴ *Id.* § 401 (5).

¹⁵ *Id.* § 401 (6).

¹⁶ *Id.* § 401 (7).

¹⁷ *Ibid.*

¹⁸ *Id.* § 401.

¹⁹ *Id.* § 402.

²⁰ *Ibid.*

²¹ *Id.* § 403.

²² *Ibid.*

a maximum of \$12, but if the terms of the contract or obligation is eight months or less, the maximum, in such case, is \$10.²³

An executed copy of the contract or obligation must be delivered to the buyer who has the right to cancel the contract or obligation and receive a refund of any down payment if it has not been so delivered, and if he has not received delivery of the goods or if the services have not been furnished.²⁴

Notice of an assignment by the seller must be given to the buyer.²⁵ The holder of any contract or obligation is required to supply the buyer with a statement of his account at least once a year without charge, and with additional statements as requested by the buyer, at a charge not in excess of one dollar each.²⁶

Notwithstanding the provisions of any contract or obligation to the contrary, prepayment is permitted, in which case the buyer is entitled to a refund credit of the credit service charge, to be computed by a prescribed formula. The seller, however, is entitled to retain an amount equal to the minimum permitted by the statute.²⁷

The holder of the instalment contract or obligation may, by written agreement with the buyer, refinance a contract or obligation. An instalment or instalments may be deferred or extended for a maximum charge of one per cent per month simple interest on the amount of the extended or deferred instalment for the period of extension or deferment; or the entire contract or obligation may be refinanced and a new schedule of instalment payments set up for which the holder may exact a credit service charge.²⁸

There are special provisions for disclosures where the balance due on new purchases is combined with that of an existing contract or obligation, a practice referred to as "add-ons." In such cases, the statute provides that the contract or obligation may include a promise or agreement to pay the consolidated total of the principal balance of a new contract and the unpaid time balance of previous contracts together with the credit service charge in substantially equal instalments. If the contract or obligation so provides, it must set forth either the amount of the instalments in which the consolidated total is payable and the periods of payment, or the number and due dates of instalments to be paid. If neither of these is itemized, it must state that the consolidated total will be payable in instalments equal to the largest amount of any instalment payable under any contract being consolidated, or that the due date of the last instalment in which the consolidated total will be payable and the instalment periods will be the same as in the last maturing contract or obligation included in the consolidated total. Maximum service charges are provided for.²⁹

A financing agency may purchase contracts, obligations and credit agreements from a seller for a mutually agreed price. No filing of the assignment, no notice to the buyer thereof, and no requirement that the seller be deprived of dominion over payments under the contract, obligation, or over the goods, if repossessed by the seller, shall be necessary to the validity of a written assignment of a contract or obligation as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrances of the seller.³⁰

After full payment and upon written demand, the holder must deliver or mail to the buyer an instrument acknowledging payment in full and releasing all security to the

²³ *Id.* § 404.

²⁴ *Id.* § 405.

²⁵ *Id.* § 406.

²⁶ *Id.* § 407.

²⁷ *Id.* § 408.

²⁸ *Id.* § 409.

²⁹ *Id.* § 410.

³⁰ *Id.* § 411.

goods.³¹ This does not do away with the obligation of the seller, under a conditional sales contract, from filing a certificate of satisfaction wherever the contract may be on file.³² Nor does it impair similar provisions required of a chattel mortgagee.³³

Revolving credit plans, in popular use by department stores, for the first time are legally identified and brought under public control. Such plans are authorized if there is compliance with the statute. It is required that the agreement be in writing and with all blank spaces filled in; and a copy of the agreement must be delivered to the buyer before the seller may avail himself of the authorized rates. The provisions which must appear in the agreement are set forth in detail, as are the maximum rates which may be charged. The buyer must receive a monthly statement of his account. No charges in addition to the service charge may be included in the agreement, except delinquency charges which are specified. A charge for insurance may be made, but not in excess of the actual cost thereof. No negotiable instruments may be executed in connection with such plan, and proper notice of assignment and cancellation must be given.³⁴

A wilful violation of the act is a misdemeanor punishable by a fine not exceeding \$500. A buyer may recover all charges imposed upon him from anyone who fails to comply with the act. However, a person who violates the law, except one who wilfully fails to comply with the provisions dealing with add-on or consolidation transactions, is permitted to comply therewith within ten days after receiving notice of his failure to comply and thereby avoid the penalties provided.³⁵

The provisions relating to refinancing of contracts³⁶ and those relating to the purchase of contracts by financing agencies³⁷ are applicable to all contracts, whether or not the goods or the services were purchased or furnished for a commercial or business use.³⁸ A waiver by the buyer of any provision of the act is unenforceable and void.³⁹

As a result of the enactments in 1956 and 1957, New York State has extended its comprehensive plan for the regulation of retail instalment sales. However, the Governor announced shortly after the statute's effective date that he would ask the next Legislature to strengthen and clarify the law regulating instalment buying. The Governor, in particular, urged that firmer controls be established to protect against what he termed as "phony bargains" and "bait advertising."⁴⁰

Meanwhile, the state administration is conducting a continuing program of publicity and education, on the theory that though certain practices are outlawed, they may very well continue if consumers are ignorant of the provisions of the law.

In view of the Governor's announcement and in light of previous experience with such novel legislation, changes and modifications are to be expected.⁴¹

³¹ *Id.* § 412.

³² *Id.* § 72.

³³ N. Y. LIEN LAW § 238.

³⁴ N. Y. PERS. PROP. LAW § 413.

³⁵ *Id.* § 414.

³⁶ *Id.* § 409.

³⁷ *Id.* § 411.

³⁸ *Id.* § 415.

³⁹ *Id.* § 416.

⁴⁰ N. Y. TIMES, Dec. 5, 1957, p. 43, col. 3.

⁴¹ 2 N. Y. LAW FORUM 413 (1956) and 31 N. Y. U. L. REV. 1419 (1956), development, background and history of earlier regulation of retail instalment sales in New York and other jurisdictions.