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## New York State Retail Instalment Sales Act

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The Agreement contemplates adoption by the several states, the federal government, the District of Columbia, Puerto Rico and United States territories and possessions.<sup>22</sup> Its efficacy depends, of course, upon its adoption by other jurisdictions. The more that adopt it, the more effective it will be. However, from New York's point of view, an adoption by the federal government only will in itself be a sufficient justification for its retention.<sup>23</sup>



### NEW YORK STATE RETAIL INSTALMENT SALES ACT

An ambitious legislative program, which heralds the beginning of an era of extensive regulation in the retail sales field in New York, was completed October 1, 1957. As of that date, virtually every sale of goods and related services made under a retail instalment sales plan within the state became subject to public regulation.<sup>1</sup>

#### *Background*

"Instalment 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 instalments, either to the seller or to some other agency which may acquire the deferred payment contract."<sup>2</sup>

Although used in America to a limited extent a century and a half ago, this form of selling has enjoyed significant popularity only during the past thirty years. During these three decades the economy of the nation has become geared to and based upon the mass production and mass distribution of consumer goods. As an integral part of this new economic system, instalment selling by the "easy budget plan" has become firmly enrooted in American retail transactions.<sup>3</sup>

<sup>22</sup> N.Y. CODE CRIM. PROC. § 669-b, art. II(a) (Supp. 1957).

<sup>23</sup> Memorandum of Joint Legislative Committee on Interstate Cooperation, 1957 N.Y. LEGIS. ANNUAL 42. It appears that many of the cases in this area involve an accused denied a speedy trial by a state because he was a federal prisoner.

<sup>1</sup> See Memorandum of Consumer Council to the Governor, MCKINNEY'S SESSION LAWS OF NEW YORK 2113 (1957).

<sup>2</sup> Donaldson, *An Analysis of Retail Installment Sales Legislation*, 19 ROCKY MT. L. REV. 135 (1947), citing Nugent and Henderson, *Installment Selling and the Consumer: A Brief for Regulation*, 173 ANNALS 93-103 (1934).

<sup>3</sup> For an excellent history of the growth of instalment buying and an analysis of the factors contributing to its growth, see Cox, *THE ECONOMICS OF INSTALMENT BUYING* 62-74 (1948).

As is inevitable in any field of business enjoying rapid growth, there have been some practices initiated (exorbitant credit charges, failure to disclose terms when a time sale is made, refusal to make refunds on prepayment) which are not in the best interests of the public.<sup>4</sup> It is true, perhaps, that such sharp practices are traceable to only a small percentage of dealers in the retail field, but the need for laws offering protection against such practices cannot be discounted when one realizes the volume of business transacted under this relatively unregulated system of buying. In 1939, the total consumer instalment credit outstanding was four and a half billion dollars (\$4,503,000,000). By 1948 it had risen to almost nine billion dollars (\$8,996,000,000), and in November, 1956, the national total was over thirty-one billion dollars (\$31,024,000,000).<sup>5</sup>

In recent years the problems faced by the instalment buyer have received increased recognition by the states and in a number of cases statutory regulations designed to protect the ultimate consumer have been the solution offered.<sup>6</sup> These statutes may be generally categorized as: those which require that the elements of the contract be disclosed to the retail buyer;<sup>7</sup> those which regulate the finance charge in addition to demanding disclosure of the contract terms;<sup>8</sup> and those

<sup>4</sup> See Holz, *The Regulation of Consumer Credit*, 1943 Wis. L. Rev. 449, 456-58.

<sup>5</sup> 43 FED. RESERVE BULL. pt. 1, 68 (Jan. 1957).

<sup>6</sup> Prior to 1945 only six states had enacted instalment sales legislation—Indiana in 1935, Massachusetts in 1939, Michigan in 1939, Maryland in 1941, New York in 1941, and Virginia in 1944. Since that time the number has increased to a total of eighteen states. CAL. CIV. CODE §§ 2981-82 (Deering 1957)\*; COLO. REV. STAT. ANN. §§ 13-16-1 to -10 (1953); CONN. GEN. STAT. §§ 6698-6704 (1949), as amended, §§ 2163c-68c (Supp. 1955); IND. ANN. STAT. §§ 58-901 to -34 (1951), as amended, §§ 58-901 to -45 (1957); KY. REV. STAT. §§ 190.010-990 (1957)\*; LAWS OF MAINE c. 386, § 2 (1957); MD. ANN. CODE art. 83, §§ 116-52 (1951), as amended, art. 83, § 119A (Supp. 1956); MASS. ANN. LAWS c. 255, §§ 11-13h (1956), as amended, c. 255, § 12 (1956); MICH. STAT. ANN. §§ 23.628(1)-(40) (Supp. 1953)\*; NEV. STAT. 1953, c. 346\*; N.J. REV. STAT. §§ 17:16B-1 to -12 (Supp. 1950), as amended, §§ 17:16B-3, -5, -6 (Supp. 1956); LAWS OF N.Y. 1956, c. 633\*, LAWS OF N.Y. 1957, c. 599; OHIO REV. CODE ANN. §§ 1317.01-99 (Baldwin 1953), as amended, § 1317.12 (1957); ORE. REV. STAT. §§ 727.010-990 (1953)\*; PA. STAT. ANN. tit. 69, §§ 505.1-19 (1956)\*; UTAH CODE ANN. § 13-1-2a (Supp. 1955); VA. CODE ANN. §§ 46-502 to -40 (1950), as amended, § 46-532 (Supp. 1956)\*; WIS. STAT. § 218.01 (1957)\*.

\* Those which apply to motor vehicles only.

<sup>7</sup> *E.g.*, in Colorado, Connecticut and New Jersey the finance charge is not regulated, but these states require that the essential elements of the contract, including the finance charge, be disclosed. COLO. REV. STAT. ANN. 13-16-1 to -10 (1953); CONN. REV. STAT. §§ 2165c-67c (Supp. 1953); N.J. REV. STAT. § 17:16B-6 (Supp. 1950). The Massachusetts statute goes a step further, requiring the following legend: "The Finance Charges Provided Herein Are Not Regulated By Law. They Are a Matter For Agreement Between The Parties." MASS. ANN. LAWS c. 255, § 12A (1956).

<sup>8</sup> The regulatory provisions vary from state to state. California and Kentucky set forth a maximum rate in the statute itself. CAL. CIV. CODE § 2982(c) (1954); KY. REV. STAT. § 190.110 (1957). Indiana prefers to leave

which subject the instalment sale to normal usury laws, with the finance charge considered as interest on a loan of money.<sup>9</sup>

Prior to the passage of the present law and its companion act relating to motor vehicles, the contents of retail instalment agreements in New York were governed by the Retail Instalment Sales Act of 1941.<sup>10</sup> This was a disclosure type statute which set out prescribed forms for conditional sales contracts and chattel mortgages concerned with the retail sale of goods for fifteen hundred dollars or less.<sup>11</sup> These forms simply required a statement of the different charges involved in the time sale; no further attempt at content regulation was made.<sup>12</sup>

### *Present Law*

The new Act covers a broad area involving the form and content of agreements encompassing secured and unsecured instalment sales, the sales financing of goods, and the sales financing of services in connection with goods or real property.

#### AGREEMENTS SPECIFICALLY COVERED

*Retail instalment contracts*—in which the title or a lien on the goods is retained or taken by the seller as security. This area includes chattel mortgages, conditional sales contracts and contracts for bailment or leasing of goods by which the bailee is bound to become or has the option of becoming the owner of the goods upon full compliance with the terms of the contract.<sup>13</sup>

*Retail instalment obligations*—these are essentially unsecured time sales agreements. These involve a promise by the buyer to pay the time sale price in stated instalments.<sup>14</sup> The seller acquires no lien and retains no title.<sup>15</sup>

*Retail credit agreements*—pursuant to which the buyer agrees to pay in instalments his outstanding indebtedness for items which may be purchased at different times.<sup>16</sup> This is the so-called "revolving"

rate determination to a commission set up for that purpose. IND. ANN. STAT. §§ 58-901-34 (1951), as amended, §§ 58-901-45 (1957).

<sup>9</sup> *E.g.*, Oregon considers motor vehicle finance as a direct loan of money and allows only the standard interest rate with the addition of fees and insurance. ORE. REV. STAT. §§ 727.340-350 (Repl. Ch. 1953).

<sup>10</sup> N.Y. PERS. PROP. LAW § 64-a; N.Y. LIEN LAW § 239-i.

<sup>11</sup> In 1956 this maximum was raised to \$3,000. Laws of N.Y. 1956, c. 754.

<sup>12</sup> The law still stands but has been made expressly inapplicable to the retail sale of "goods" covered by the present law. Laws of N.Y. 1957, c. 599, § 2.

<sup>13</sup> N.Y. PERS. PROP. LAW § 401(6) (Supp. 1957).

<sup>14</sup> *Id.* § 401(7).

<sup>15</sup> This extension of regulation to unsecured transactions is important since there are many instalment sales of soft goods that have so short a useful life that they are not relied on for security. See Donaldson, *An Analysis of Retail Installment Sales Legislation*, 19 ROCKY MOUNTAIN L. REV. 135, 140 (1947).

<sup>16</sup> N.Y. PERS. PROP. LAW § 401.8 (Supp. 1957).

credit arrangement used by department stores under which new items are added to a charge account without waiting for the full payment of any one item. This is the first time in any state that such transactions have been subject to regulation.<sup>17</sup>

#### AGREEMENTS SPECIFICALLY EXCLUDED

The Act does not apply to sales of motor vehicles,<sup>18</sup> sales for commercial or business use,<sup>19</sup> and instalment sales governed by the regulations of the Federal Housing Administration or the Veterans Administration.<sup>20</sup>

#### REQUIREMENTS

The All Goods Act, as it is more popularly known, has two major aims which determine the form and substance of the regulated agreements: full disclosure of all the terms of the contract prior to signing, and tight control of credit charges.

*Disclosure of terms.* In the case of either a retail instalment contract or obligation, the Act requires that the agreement: be in writing and dated,<sup>21</sup> and be clearly identified as either a retail instalment contract or obligation;<sup>22</sup> state the names and addresses of the parties; contain an adequate description of the subject matter<sup>23</sup> and a notice to the buyer enumerating certain rights to which he is entitled;<sup>24</sup> and, finally, itemize the purchase price including the cash sale price and all financing charges.<sup>25</sup>

<sup>17</sup> See Memorandum of Consumer Council to the Governor, MCKINNEY'S SESSION LAWS OF NEW YORK 1862 (1947).

<sup>18</sup> N.Y. PERS. PROP. LAW § 401(1) (Supp. 1957). The sale of motor vehicles is covered by N.Y. PERS. PROP. LAW §§ 301-11, as added by Laws of N.Y. 1956, c. 633, as amended, Laws of N.Y. 1957, c. 599.

<sup>19</sup> N.Y. PERS. PROP. LAW § 401(1) (Supp. 1957). The phrase is derived from Section 64-a of the Personal Property Law and has been construed, ". . . to designate human efforts which have for their goal a reward or profit." *Welch v. Campbell*, 197 Misc. 165, 168, 94 N.Y.S.2d 860, 864 (1950), *aff'd*, 278 App. Div. 605, 102 N.Y.S.2d 51 (3d Dep't 1951).

<sup>20</sup> N.Y. PERS. PROP. LAW § 401(7) (Supp. 1957).

<sup>21</sup> *Id.* § 402(1). If printed, ". . . the printed portion . . . [must] be in at least eight point type." *Ibid.*

<sup>22</sup> *Id.* § 402(2)(a).

<sup>23</sup> *Id.* § 402(3)(a).

<sup>24</sup> *Id.* § 402(2)(b). "A notice in at least eight point bold type reading as follows: Notice to the Buyer:

1. Do not sign this agreement before you read it or if it contains any blank space.
2. You are entitled to a completely filled in copy of this agreement.
3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the credit service charge." *Ibid.*

<sup>25</sup> *Id.* § 402(3). In addition, if the amount of any instalment substantially exceeds the amount of a prior instalment (commonly called a "balloon"

*Credit Regulation.* Usury laws have generally been held to be inapplicable to instalment sales on the ground that the normal charge above the cash price is not interest alone, but includes a part of the purchase price of the goods.<sup>26</sup> As the usury statutes were enacted at a time when instalment selling was relatively unknown, their draftsmen could not have taken into consideration the proportionately higher costs involved in extending credit in a retail sales agreement; they sought only to fix interest rates on commercial loans.<sup>27</sup> The New York legislature, however, has taken into consideration these higher costs and, at the same time, has sought to prevent the abuses of instalment sale financing by allowing a maximum charge exempt from the ordinary usury laws, as has been done in the case of small loans.<sup>28</sup>

The maximum charge, termed the service charge, is set at ten dollars per one hundred dollars per year on a principal balance up to five hundred dollars, and eight dollars per one hundred dollars per year on the amount exceeding five hundred dollars. If the amount so computed for one year is less than twelve dollars, it may be set at twelve. However, if the contract is of eight months' duration or less, the minimum credit service charge is ten dollars. All charges incidental to the making of the contract or obligation are subsumed in the credit service charge, and may not be imposed additionally except as otherwise expressly provided for.<sup>29</sup>

*Insurance.* The costs of insurance may be charged separately, and, where so charged, the contract or obligation must state which party is to furnish the coverage. If insurance is furnished by the seller, the maximum charge cannot exceed the amount of the premium chargeable in accordance with rate filings made with the Superintendent of Insurance for such insurance by the insurer.<sup>30</sup>

#### EXTENSION AND REFINANCING

By stipulation in writing between the parties, the due date may be extended or payments may be deferred. The seller or holder of the contract or obligation may make a charge for the extension or deferral, but this charge may not exceed one per cent per month of simple interest on the amount extended or deferred, computed from the due date.<sup>31</sup>

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payment), notice of this must be conspicuously given in the contract or obligation. *Ibid.*

<sup>26</sup> See, e.g., *In re Bibbey*, 9 F.2d 944 (D. Minn. 1925); *Commercial Credit Co. v. Tarwater*, 215 Ala. 123, 110 So. 39 (1926); *Zazzaro v. Colonial Acceptance Corp.*, 117 Conn. 251, 167 Atl. 734 (1933); cf. *Ricker v. Fay Securities Co.*, 110 Cal. App. 750, 294 Pac. 732 (1931).

<sup>27</sup> See Ecker, *Commentary on "Usury in Instalment Sales,"* 2 LAW & CONTEMP. PROB. 173, 185 (1935).

<sup>28</sup> See N.Y. BANKING LAW § 352.

<sup>29</sup> N.Y. PERS. PROP. LAW § 404 (Supp. 1957).

<sup>30</sup> *Id.* § 402(5).

<sup>31</sup> *Id.* § 409.

## DELINQUENCY AND COLLECTION CHARGES

In case of default by the buyer, the statute allows for delinquency charges which, on a single instalment, may not exceed five per cent of such instalment, or five dollars, whichever is less, and may be collected only where there has been a default for ten days or more. Attorneys' fees in instances of delinquency are allowable, when actually incurred, to the extent of twenty per cent of the amount due, if the attorney is not a salaried employee of the seller or holder for collection.<sup>32</sup>

## CONSOLIDATION AND ADD-ONS

The new statute also contains provisions for consolidations and add-ons, by which new instalment sales contracts or obligations can be executed which include unpaid balances remaining from previous purchases. In such contracts or obligations, the buyer may promise to pay, in substantially equal instalments, the *consolidated total* of the principal balance of a new purchase plus the unpaid balances of previous obligations or contracts, including credit service charges. In addition, a credit service charge may be imposed on this total. Full disclosure of the terms of the consolidation and the rate of the added service charge must be made.<sup>33</sup> Under add-on agreements, merchandise purchased under previous contracts, where a balance remains unpaid, can be held as security for a current purchase, subject to provisions for allocating payments in the consolidated contract to each of the purchases. If such unpaid-for purchases are used as security for new purchases, but the previous agreement is not subsumed under the new agreement, the new security interest attaches to the former purchase *only* until the old purchase price is fully paid or twenty per cent of the new purchase price is paid.<sup>34</sup>

## PROHIBITIONS

The use of negotiable instruments to evidence the buyer's obligation is forbidden except in connection with real property improvement transactions. In transactions of the latter type, the obligation may require or entail the execution of a promissory note, but only if the note bears a legend identifying the transaction giving rise to the note. In addition, any note which does not state the amount of the credit service charge included in its face amount may not be negotiated or transferred without the simultaneous delivery of the related retail instalment obligation.<sup>35</sup>

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<sup>32</sup> *Id.* § 402(6).

<sup>33</sup> *Id.* § 410(1).

<sup>34</sup> *Id.* § 410(2).

<sup>35</sup> *Id.* § 403(1)-(2).

Expressly declared void are agreements by the buyer: not to assert against an assignee any claim or defense arising out of the sale; to permit the arbitrary acceleration of the maturity of all or any part of the amount owing, in the absence of the buyer's default; to give an assignment of wages or power of attorney to confess judgment; or to waive certain rights in the event of repossession upon default.<sup>36</sup>

#### DELIVERY AND CANCELLATION

Delivery of a copy of the contract or obligation in person or by mail is required by the Act. If the contract is not received by the buyer before delivery of the goods, the buyer can cancel the contract and be indemnified.<sup>37</sup> After payment of the entire sum that may be involved in the agreement, the seller must, upon written request by the buyer, deliver or mail an acknowledgment releasing all security in the goods.<sup>38</sup>

#### RETAIL CREDIT AGREEMENTS

A special section of the statute prescribes the form retail credit agreements<sup>39</sup> must take and requires the rendition at the end of each monthly period (not necessarily a calendar month) of a detailed statement of the buyer's account. Ceilings on service charges are as follows: on the first five hundred dollars of outstanding indebtedness, one and a half per cent per month, plus, on the excess over five hundred dollars, one per cent per month, with a minimum monthly charge of at least one dollar allowed.

#### *Conclusion*

It would be premature to attempt to assess the extent to which the instalment legislation of 1957 will remedy the situations to which it is addressed. Time will undoubtedly point up areas where improvements may be needed. The immediate task is to insure widespread understanding of the provisions of the new legislation, for it is hoped that general compliance will eliminate the abuses that have so long plagued the responsible businessman as well as the consumer.

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<sup>36</sup> *Id.* § 403(3).

<sup>37</sup> *Id.* § 405.

<sup>38</sup> *Id.* § 412.

<sup>39</sup> *Id.* § 413.