

Retail Installment Sales Act

number of jurisdictions have enacted statutes designed to protect installment buyers from a variety of difficulties into which they may be led by their desire for a better material life and their inability properly to appraise the cost. In addition to statutes regulating the right and method of repossession of goods sold under conditional sales contracts, one of which has been in effect in Ohio since 1885,¹ more recent acts have attempted to protect buyers against excessive financing charges on installment purchases and against certain contractual provisions the effect of which may not be apparent when the contracts are made.² The statutes have sought this protection through one or more of several devices:

(1) *Licensing provisions.* Installment sellers and professional discounters of installment paper are required to be licensed and are subject to regulation with respect to contractual provisions, financing charges and perhaps other matters by an administrative agency.³

(2) *Disclosure requirements.* The statutes commonly require that the contract be in writing, that a copy be delivered to the buyer at the time of execution and that the writing clearly disclose the cash price, the amount of down payment, the unpaid balance, the finance charge, the amount of the time balance and the amount and due date of installments.⁴

¹ OHIO GEN. CODE § 8570.

² CONN. GEN. STAT. (1949) §§ 6698-6704; HAWAII REV. L. (1945) §§ 9162-9166; IND. STAT. ANN. (Burns, 1943) §§ 58-901—58-922; ME. REV. STAT. (1944) c. 56, §264; MD. CODE ANN. (Supp. 1947) Art. 83, §§ 116-140; MASS. ANN. L. (Supp. 1948) c. 255, §§ 11-13H; MICH. STAT. ANN. (Supp. 1947) §§ 19.415 (1)-19.415 (14); N. J. STAT. ANN. (Supp. 1948) tit. 17, §§ 16B-1—16B-12; N. Y. PERS. PROP. L. (McKinney, Supp. 1948) § 64.a; PA. STAT. ANN. (Purdon, Supp. 1948) tit. 69, §§ 601-637; WIS. STAT. (1947) § 218.01. Several of these acts are compared in detail in Donaldson, *An Analysis of Retail Installment Sales Legislation*, 19 ROCKY MT. L. REV. 135 (1947). For an interesting discussion see Note 44 ILL. L. REV. 227 (1949).

³ IND. STAT. ANN. (Burns, 1943) § 58-911; ME. REV. STAT. (1944) c. 56, § 264; PA. STAT. ANN. (Purdon, Supp. 1948) tit. 69, § 604; WIS. STAT. (1947) § 218.01. That part of the Indiana act which prohibits the assignment of a retail installment contract to any person not a licensee under the act has been held unconstitutional when applied to an out-of-state assignee. *Department of Financial Institutions v. General Finance Corporation*, 86 N.E. 2d 444 (Ind. 1949).

⁴ The New York act is unique in specifying the size of type in which contractual provisions must appear. N. Y. PERS. PROP. L. (McKinney, Supp. 1948) § 64a.

(3) *Forbidden contractual provisions.* In some states certain contractual provisions are forbidden. Maryland, for example, prohibits the "balloon" contract, in which the final installment payment is much larger than the "regular" payments, and the "insecurity" clause, by which the seller or his assignee may accelerate the due date of the payments if he deems himself insecure.⁵ Some states regulate the so-called "add-on," a provision by which the seller may consolidate with the first purchase later installment purchases made before payments on the first have been completed.⁶

(4) *Limiting finance charges.* In a few jurisdictions maximum financing charges have been prescribed either by statute or by a regulatory authority established by statute.⁷

(5) *Regulation of prepayments and delinquencies.* Several statutes prescribe the charges which may be made for delinquent payments and provide for allowances which must be made in the case of prepayment of installments.⁸

These statutes vary widely in scope. Some are confined to retail sales. Some apply only to sales of motor vehicles,⁹ while others embrace all installment sales of personal property.¹⁰

The Ohio Retail Installment Sales Act,¹¹ in summary, (1) applies to all retail installment sales, (2) is based fundamentally on a statutory requirement of disclosure rather than on a licensing procedure and (3) fixes maximum rates for finance charges. A more detailed consideration of the act follows:

SCOPE

The act applies to every sale by which the buyer acquires specific goods for purposes other than resale, under a contract which provides that the cash price may be paid in installments over a period of time,¹² with the exception of sales in which the base finance and service charge does not exceed fifteen dollars.¹³ The term "goods" is defined to include "all chattels personal other than money, emblements, industrial growing crops, things so affixed to

⁵ MD. CODE ANN. (Supp. 1947) art. 83, § 118. The "insecurity" clause is prohibited in Pennsylvania. PA. STAT. ANN. (Purdon, Supp. 1948) tit. 69, § 615.

⁶ MD. CODE ANN. (Supp. 1947) art. 83, § 124.

⁷ IND. STAT. ANN. (Burns, 1943) § 58-926; PA. STAT. ANN. (Purdon, Supp. 1948) tit. 69, § 619.

⁸ E.g., CONN. GEN. STAT. (1949) § 6701; PA. STAT. ANN. (Purdon, Supp. 1948) tit. 69, §§ 621, 622.

⁹ The Maine, Michigan, Pennsylvania and Wisconsin acts, *supra* note 2, are so limited.

¹⁰ In some states the operation of the act is restricted to sales within specified price limits. See the discussion of this feature in Donaldson, *supra*, note 2, at p. 139.

¹¹ OHIO GEN. CODE §§ 6346-15 to 6346-27, S. B. 94, effective August 10, 1949.

¹² OHIO GEN. CODE § 6346-15.

¹³ OHIO GEN. CODE § 6346-20.

land as to become a part thereof, or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."¹⁴ The term "specific goods" includes identified goods and related services.¹⁵ There is a provision that a seller need not deliver a copy of the contract to the buyer at any time prior to the delivery of the specific goods.¹⁶ Retention of the goods by the seller does not, however, exempt the sale from the other provisions of the act.

DISCLOSURE PROVISIONS

With the exception noted above, every retail installment sale must be evidenced by a written instrument, a copy of which must be delivered to the buyer.¹⁷ This instrument must recite the following separate items:¹⁸

(1) The cash price of the specific goods. This is defined as the price, agreed upon in good faith by the parties, at which the goods would be sold if the sale were for cash.

(2) The amount of the buyer's downpayment.

(3) The unpaid balance of the cash price.

(4) Insurance cost, if the seller has agreed to purchase insurance and extend credit therefor to the buyer.

(5) The sum of items (3) and (4).

(6) The amount of the finance charge. The act provides that any advance in the cash price ordinarily charged by the seller shall be considered a finance charge.¹⁹ This item may be stated as a rate if the rate does not exceed 8% per annum.

(7) The indebtedness of the buyer to the seller which is the sum of items (5) and (6). This item need not be stated as a figure if item (6) is stated as a rate. In any event item (7) must state the number of installment payments necessary finally to pay the indebtedness. The amount and date of each payment must be stated or, alternatively, the payments may be stated "in terms of a series of payments of specified amounts, which amounts may state the principal amount plus the finance charge in terms of a rate at specified intervals of time from an initial date." The alternative, which is obscurely worded, likely refers to some such form of statement as "payable, beginning March 1, 1950, in twelve monthly installments of \$17.85 each, which amount includes an 8% finance charge."

In addition to the above items which must be stated in the written instrument evidencing the sale, the seller must, if he has

¹⁴ OHIO GEN. CODE § 6346-15.

¹⁵ OHIO GEN. CODE § 6346-15.

¹⁶ OHIO GEN. CODE § 6346-16.

¹⁷ OHIO GEN. CODE § 6346-16.

¹⁸ OHIO GEN. CODE § 6346-18.

¹⁹ OHIO GEN. CODE § 6346-15.

agreed to procure insurance for the buyer, deliver to the buyer a policy or certificate for such insurance.²⁰

REGULATION OF CHARGES

The seller may contract for the payment of a finance charge which shall not exceed the sum of (1) a base finance charge at the rate of eight dollars per one hundred dollars per year on the principal balance and (2) a service charge of fifty cents per month for the first fifty dollars of the principal balance and twenty-five cents per month for each of the next fifty dollar units or fraction thereof.²¹ In addition to the finance charge the seller may contract for the payment of a 5% delinquency charge on payments more than ten days late, but in no event shall a delinquent charge for any one installment exceed three dollars. In lieu of such a delinquency charge the seller may contract for the payment of interest after maturity not to exceed 8% per year.²²

PREPAYMENT PROVISION

Notwithstanding a contrary provision in the contract a buyer may satisfy the debt in full at any time prior to maturity and shall then be entitled to a refund of a proportional part of the total finance charge less ten dollars. No refund of less than one dollar need be made.²³

PENALTIES

A fine of not more than one thousand dollars, or imprisonment for not more than one year, or both, is prescribed for any wilful violation of the act.²⁴ In addition, several remedies are available to the buyer in the event of particular violations: Where the seller has agreed to procure insurance for the buyer and to extend credit for the premium, the buyer is not liable on the installment contract until a policy or certificate of the insurance is delivered to him, or until full refund of the insurance premium is made. If the charge for insurance is greater than the premium for like insurance as fixed in the published manual of a recognized standard rating bureau designated by the seller, the buyer may deduct from the amount owed the seller an amount equal to three times the difference.²⁵ If an installment contract evidences an indebtedness greater than that allowed by the act, the buyer must notify the seller of the overcharge. If the seller does not make an adjustment

²⁰ OHIO GEN. CODE § 6346-19.

²¹ OHIO GEN. CODE § 6346-20.

²² OHIO GEN. CODE § 6346-22.

²³ OHIO GEN. CODE § 6346-23.

²⁴ OHIO GEN. CODE § 6346-25.

²⁵ OHIO GEN. CODE § 6346-19.

within ten days after such notification the contract is not enforceable against the buyer. If excessive charges are received by the seller or his assignee, the buyer may recover the total amount paid from the seller or the holder of the contract.²⁶ The act makes no provision for notice or for an opportunity for the seller to make a refund in the event of an overpayment.

REGULATION OF ASSIGNMENT

The act prohibits assignments of an installment contract by the seller under an agreement which permits the seller to retain or receive, directly or indirectly, more than two per cent of the amount collected from the buyer as a finance charge. This restriction does not apply to cases in which the seller agrees to act as the agent of the assignee in making collections and otherwise servicing the installment contract.²⁷

C. C. C.

²⁶ OHIO GEN. CODE § 6346-22.

²⁷ OHIO GEN. CODE § 6346-22.