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The Pennsylvania Goods and Services Installment Sales Act

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RECENT LEGISLATION

THE PENNSYLVANIA GOODS AND SERVICES INSTALLMENT SALES ACT

I. INTRODUCTION

A long felt deficiency in Pennsylvania retail consumer legislation¹ has been remedied with the recent enactment of the Goods and Services Installment Sales Act,² which became effective on April 1, 1967, and which combines with the Motor Vehicle Sales Finance Act,³ the Home Improvement Finance Act⁴ and pertinent provisions of the Uniform Commercial Code⁵ to give the Pennsylvania retail consumer one of the most comprehensive bodies of regulatory legislation in the nation. The new act, largely modeled after the California Unruh Act,⁶ is one of many similar pieces of legislation enacted throughout the states⁷ in response to the large volume of installment credit sales in recent years.⁸

The state legislatures have been attempting to effect a balance between the legitimate consumer and retailer interests involved with financing the "American way of life" on the installment plan.⁹ It is becoming increasingly obvious, however, that this legislation is not reaching the segment of the population that is in greatest need of its protection — the low income and poorly educated consumer.¹⁰ Furthermore, the very fact that various state legislatures have separately enacted provisions regulating installment sales gives rise to a second criticism of existing consumer legislation that is grounded on the lack of uniformity in regulatory provisions from state to

1. See Comment, *Retail Instalment Sales — Consumer Protection In Pennsylvania*, 4 VILL. L. REV. 408 (1959).

2. PA. STAT. ANN. tit. 69, §§ 1101-2303 (Supp. 1966).

3. PA. STAT. ANN. tit. 69, §§ 601-37 (1965).

4. PA. STAT. ANN. tit. 73, §§ 500-100 to 500-602 (Supp. 1966).

5. PA. STAT. ANN. tit. 12A, § 2-102 (Supp. 1966), provides that article 2 does not impair or repeal any statute regulating sales to consumers, thus giving express sanction to the legislation under consideration.

6. CAL. CIV. CODE, §§ 1801-1812.10. For a comprehensive analysis of the California act see Comment, *Legislative Regulation of Retail Installment Financing*, 7 U.C.L.A.L. REV. 623 (1960).

7. For a complete listing of all retail installment sales acts see 1 CCH INSTALLMENT CREDIT GUIDE ¶ 35.

8. See CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION (1965); McALISTER, RETAIL INSTALLMENT CREDIT GROWTH AND LEGISLATION (Ohio State University Bureau of Business Research 1964).

9. See Warren, *Regulation of Finance Charges In Retail Instalment Sales*, 68 YALE L.J. 839, 866 (1959).

10. See Willging, *Installment Credit: A Social Perspective*, 15 CATHOLIC U.L. REV. 45 (1965).

state.¹¹ This diversity has caused the National Conference of Commissioners on Uniform State Laws to undertake the promulgation of a Uniform Consumer Credit Code to be patterned after the highly successful Uniform Commercial Code.¹² However, despite the criticism aimed at retail installment sales legislation generally,¹³ and the new Pennsylvania Act in particular,¹⁴ the Pennsylvania installment consumer is in a comparatively enviable position. In fact, it has been alleged that the new elevation of consumer interests in Pennsylvania is directly at the expense of those legitimate commercial enterprises dealing in installment sales and financing.¹⁵

Recognizing the fallibility of this type of legislation and the prejudicial criticism it invariably receives from the countervailing interests which it affects, it shall be the purpose of this comment to scrutinize the provisions of the new act and, where pertinent, to indicate how analogous provisions of similar acts have been construed. In this manner, some insight may be obtained as to the possible construction of the act under consideration.

II. SCOPE OF THE ACT

The dual purpose of the Goods and Services Installment Sales Act is to regulate the form and, to some extent, the substance of both retail installment contracts and revolving accounts, and to establish maximum permissible finance or service charges (known also as a time price differential) which may be assessed for the privilege of buying "on time." Generally,

11. See *supra* note 7. In addition to the great disparity between the legislation of various states, an inexplicable lack of uniformity exists within much of the individual state legislation in this area. Pennsylvania provides an excellent example in point. Notwithstanding the fact that the three statutes now in force in Pennsylvania cover different subject matter and to that extent might have diverse objectives, it seems of little practical value to deviate from a standard format and standard definitions where the same basic purposes are being effectuated. Specifically, the Motor Vehicle Sales Finance Act, PA. STAT. ANN. tit. 69, § 603(13) (1965), and the Home Improvement Finance Act, PA. STAT. ANN. tit. 73, § 500-102(14) (Supp. 1966), use the term *principal amount financed* to define the cash price plus insurance costs and official fees (or incidental costs) minus the downpayment, whereas the Goods and Services Installment Sales Act, PA. STAT. ANN. tit. 69, § 1201(11) (Supp. 1966), uses the term *unpaid balance* to define this amount. Such lack of uniformity can only promote confusion.

12. See Buerger, *Uniform Law Commissioners' Consumer Credit Project — 4th Year*, 20 PERSONAL FINANCE LAW Q. REP. 84 (1966); Buerger, *The Proposed Uniform Consumer Credit Code — A Further Report*, 20 PERSONAL FINANCE LAW Q. REP. 136 (1966). See also UNIFORM CONSUMER CREDIT CODE, FIRST TENTATIVE DRAFT (1966). In addition to activity on a state level, there has been considerable agitation on the federal level for legislation in the area of consumer retail sales. See *Hearings on S. 2755 Before a Subcommittee of the Senate Committee on Banking and Currency*, 86th Cong., 2d Sess. (1960); *Hearings on S. 1740 Before a Subcommittee of the Senate Committee on Banking and Currency*, 87th Cong., 1st & 2d Sess. (1961-1962); *Hearings on S. 750 Before a Subcommittee of the Senate Committee on Banking and Currency*, 88th Cong., 1st & 2d Sess. (1963-1964). See also McALISTER, AN ANALYSIS OF PROPOSED FEDERAL LEGISLATION COVERING CONSUMER INSTALLMENT CREDIT (North Texas State University Business Studies, Fall 1966); *Retail Credit Transactions — Proposed FTC Guides*, 5 TRADE REG. REP. ¶ 50159.

13. See *supra* note 10.

14. See Knox, *The New Pennsylvania Goods and Services Installment Sales Act*, 21 PERSONAL FINANCE LAW Q. REP. 10 (1966).

15. See Comment, *Legislative Solution To A Judicial Dilemma: The Pennsylvania Home Improvement Finance Act*, 10 VILL. L. REV. 309, 321 (1965).

the act covers all installment contracts and revolving credit accounts for the sale of goods or services in which the buyer is a resident of Pennsylvania and either the offer or the acceptance originates in Pennsylvania.¹⁶ This includes installment contracts entered into as a result of a face to face transaction between the buyer and seller, as well as contracts negotiated over the phone or through the mail, provided the buyer is ordering from a catalog or other printed solicitation which clearly sets forth the cash and deferred payment prices and other terms.¹⁷ By defining goods and services to exclude those goods and services covered by the Motor Vehicle Sales Finance Act and the Home Improvement Finance Act, the General Assembly has avoided the possibility of concurrent legislation in this area.¹⁸

The act requires the embodiment of the entire agreement, including any promissory notes relating to the transaction, in a single document,¹⁹ and specific provision is made for the inclusion of referral agreements, where the buyer is compensated for referring prospective customers to the seller.²⁰ Certain necessary disclosures, including the names and addresses of the buyer and seller, a description of the goods or services and an itemization of certain well-defined financial aspects of the transaction, must be included in the sales document.²¹ In addition, if a security interest or lien is retained in goods as a result of the agreement, the contract must be labeled a "Security Agreement" or "Lien Contract,"²² thus subjecting it to the provisions of article 9 of the Uniform Commercial Code.²³ To minimize the possibility of unconscionability through the deceptive employment of "fine print," the act provides for the use of a minimum size print in the body of the contract and a larger bold face print in specific clauses²⁴ in order to call the buyer's attention to the gravity of the agreement into which he is entering. At least one commentator is not satisfied that the

16. PA. STAT. ANN. tit. 69, § 1103 (Supp. 1966). Neither the Motor Vehicle Sales Finance Act nor the Home Improvement Finance Act contains similar provisions enumerating those contracts which purportedly fall within the act. The California act is also conspicuously silent on this point. Conceivably, this section of the Pennsylvania act raises Federal Constitutional questions regarding state regulation of interstate trade. In addition, the section expressly forecloses any agreement between the parties as to the law that shall be applicable to the transaction, a contract right expressly sanctioned by the Uniform Commercial Code. PA. STAT. ANN. tit. 12A, § 1-105 (Supp. 1966).

17. PA. STAT. ANN. tit. 69, § 1308 (Supp. 1966).

18. PA. STAT. ANN. tit. 69, § 1201 (Supp. 1966).

19. PA. STAT. ANN. tit. 69, § 1302 (Supp. 1966). An exception is made to the single document requirement where the cash sale price of the goods or services is \$50 or less; see § 1309. See also *Fresno Loan & Thrift v. Roberts*, 207 Cal. App. 899, 25 Cal. Rptr. 624 (Super. Ct. 1962).

20. PA. STAT. ANN. tit. 69, § 1302(a) (Supp. 1966). It is interesting to note that § 500-404 of the Home Improvement Finance Act, PA. STAT. ANN. tit. 73, § 500-102(14) (Supp. 1966), expressly prohibits the inclusion of a referral provision in contracts covered by that Act. See *Norman v. World Wide Distrib., Inc.*, 202 Pa. Super. 53, 56, 195 A.2d 115, 117 (1963).

21. PA. STAT. ANN. tit. 69, § 1303 (Supp. 1966).

22. PA. STAT. ANN. tit. 69, § 1302(b) (Supp. 1966).

23. See PA. STAT. ANN. tit. 12A, § 9-203(2) (Supp. 1966); PA. STAT. ANN. tit. 69, § 2101 (Supp. 1966). See also *Associates Discount Corp. v. Palmer*, 47 N.J. 183, 219 A.2d 858 (1966).

24. PA. STAT. ANN. tit. 69, §§ 1301, 1302(b), 1302(c) (Supp. 1966).

consumer who fully comprehends the terms of the agreement is in any better position than one who does not.²⁵

Article 8 of the Goods and Services Installment Sales Act is devoted to add-on sales. It provides that a retail installment contract may, at the option of the seller, contain a provision under which subsequent purchases made by the same buyer can be added to the initial contract, if the seller delivers a detailed memorandum to the buyer covering the new retail installment sale.²⁶ The most important provision of this article forbids the retention of a security interest in goods purchased and fully paid for until payment for subsequently acquired goods has been made.²⁷ This statutory prohibition will avoid the necessity for a judicial determination of unconscionability to negate the effect of this type of title retention clause, as was required in *Williams v. Walker-Thomas Furniture Co.*²⁸

Article 4 expressly forbids the inclusion of certain provisions in retail installment contracts.²⁹ Again, the General Assembly has made determinations as to what is unconscionable in order to avoid the uncertainties of adjudication under section 2-302 of the Uniform Commercial Code. One should not assume, however, that section 2-302 of the Code has no continued vitality with respect to retail installment contracts, for it is conceivable that provisions not expressly prohibited by the act may be declared unconscionable under that section.³⁰ The recent New York case of *Frostifresh Corp. v. Reynoso*³¹ is illustrative of this fact. The defendants in that case were Spanish speaking buyers who entered into a contract written entirely in English for a refrigerator-freezer. The cash sales price set forth in the contract was \$900. In addition, a service charge of \$245.88 was levied, making the total sales price \$1,145.88. The seller admitted that the appliance cost him only \$348. Although New York has a Retail Installment Sales Act in effect,³² the District Court opinion did not allude to it but declared that the contract was unconscionable under section 2-302 of the Uniform Commercial Code, and that the defendants were liable only for payment of \$348, the cost of the item to the plaintiffs.³³

25. See Shuchmann, *Consumer Credit By Adhesion Contracts*, 35 TEMP. L.Q. 125 (1962).

26. PA. STAT. ANN. tit. 69, §§ 1801, 1803 (Supp. 1966).

27. PA. STAT. ANN. tit. 69, § 1801 (Supp. 1966).

28. 350 F.2d 445 (D.C. Cir. 1965).

29. PA. STAT. ANN. tit. 69, §§ 1401, 1403 (Supp. 1966).

30. See Levin, *Unconscionability In Retail Installment Sales Contracts*, 89 N.J.L.J. 513 (1966).

31. 274 N.Y.S.2d 757 (Dist. Ct. 1966). See also *Mann v. Earls*, 226 Cal. App. 2d 155, 37 Cal. Rptr. 877 (Dist. Ct. App. 1964).

32. N.Y. PERS. PROP. LAW §§ 401-18.

33. The facts in the *Reynoso* case indicate a means whereby retail sellers may avoid the requirements of retail installment sales acts by charging a higher price for their goods. The *Reynoso* case is an extreme example; not only did the seller price the item at more than two and one-half times its actual cost, but he also added a service charge based on this inflated price. A less extreme method would be to merely inflate the price and advertise as not imposing a service charge. In fact, the inflated price includes a comfortable profit plus a hidden service charge in excess of that permitted by the retail installment sales act. The new Pennsylvania Goods and Services Installment Sales Act, PA. STAT. ANN. tit. 69, § 1201(6) (Supp. 1966), attempts to deal with this problem in its definition of retail installment contract, where it states

III. FINANCE CHARGE REGULATION

Unquestionably, the most unique and important aspect of the new act is contained in the provisions which regulate the extent to which service charges may be assessed on installment sales contracts and revolving credit accounts.³⁴ The uniqueness of these provisions stems from two factors: (1) the act provides for two ceilings on the service charge for retail installment contracts, and; (2) the ceilings for both retail installment contracts and revolving credit accounts are among the lowest for retail credit in the nation. It is unfortunate, however, that the statutory language relating to the permissible service charge limitations for retail installment contracts is equivocal.

The act provides in section 1501(a) that the maximum permissible service charge is two-thirds of one per cent on the unpaid balance multiplied by the number of months elapsing between the date of the contract and the due date of the last installment. This is generally conceded to be an \$8 per \$100, or an eight per cent, add-on rate. For example, if the unpaid balance were \$120 and that balance was to be repaid in twelve equal monthly installments, the maximum permissible finance charge would be \$9.60 per annum, or monthly installments amounting to \$10.80 each. But the finding of a maximum permissible charge under section 1501(a) does not complete the necessary computations; section 1501(b) imposes a second ceiling by requiring that the service charge (presumably the service charge as computed under section 1501(a)) not exceed the equivalent of fifteen per cent simple interest per annum on the unpaid balance. This additional ceiling undeniably has overtones of the truth in lending legislation that has been around Congress for years.³⁵ Rather than compel the full disclosure of a simple annual rate that is required by recent legislation in Massachusetts,³⁶ the Pennsylvania General Assembly incorporated the idea of simple annual interest into the Pennsylvania act in the form of a finance charge ceiling. The rationale behind simple annual interest or rate disclosure is quite simple:

A statutory add-on maximum of six dollars per one hundred dollars of the principal balance financed does not limit the dealer to a

that a contract which does not add a time price differential but which covers goods or services that are available at a lesser price if paid for in cash is included within the ambit of the act. Two questions come immediately to mind with respect to this definition: (1) Will the contracts of a dealer in an economically depressed neighborhood, whose entire trade is in installment sales contracts, come within the purvey of the act when he raises his prices to circumvent the act?, and (2) Will interstate dealers' installment contracts come within the act when their Pennsylvania price for a specific item exceeds their New Jersey price for that same item? In this area, § 2-302 of the Uniform Commercial Code may be utilized to prevent consumer extortion by retail pricing techniques.

34. See Warren, *supra* note 9.

35. See *supra* note 12.

36. MASS. ANN. LAWS ch. 255D, § 1161(11) (1966). For informative critiques of the new Massachusetts act see Driver, *The New Massachusetts Retail Installment Sales Act*, 20 PERSONAL FINANCE LAW Q. REP. 110 (1966); Wilkins, *The New Massachusetts Retail Installment Sales Act*, 51 MASS. L.Q. 205 (1966).

true interest rate of six per cent, for the buyer does not have the use of the entire principal balance for the whole year. Since he is discharging his obligations by monthly payments and has the use, on an average, of only slightly more than one-half of the original principal balance throughout the year, the true interest rate on a six per cent add-on charge is something over eleven per cent.³⁷

The incorporation of the concept of simple annual interest or "true" interest into a statute by requiring disclosure of a "true" interest rate is not, however, without its drawbacks.³⁸ In fact, the somewhat abstract and oftentimes misleading nature of the concept of "true" interest rate disclosure is undoubtedly one of the major reasons why "truth in lending" legislation on the federal level has not garnered enough support for passage. In the new act, the Pennsylvania General Assembly avoided the pitfalls of a disclosure requirement but may have created unforeseen difficulties in translating the concept of simple annual interest or "true" interest into a finance charge ceiling. Section 1501(b), as presently worded, is subject to three possible interpretations. The first or literal interpretation would give the section meaning according to the actual phraseology used. Thus, reverting to the example of a \$120 unpaid balance, the fifteen per cent simple interest per annum would establish a service charge ceiling of \$18. As a meaningful qualification of section 1501(a) this construction is untenable, yet a literal reading of the section compels this interpretation.³⁹

Assuming that the General Assembly did not intend to create a meaningless second ceiling, one would inquire logically into the true meaning of section 1501(b). It seems apparent that the General Assembly intended to permit retailers to charge an eight per cent add-on rate if that rate does not exceed the equivalent of a fifteen per cent "true" interest rate. This assumption gives rise to the second or direct ratio interpretation, which is derived from the direct ratio or actuarial formula for computing "true" interest⁴⁰ and is conceded to result in the most accurate computation of that figure.⁴¹ The direct ratio interpretation embodies the United States Rule, which provides for the amortization of the interest or finance charge by equal percentage rates for each installment period,⁴² and results in diminishing dollar amounts being allocated to the finance charge for each period. However, when the direct ratio formula for computing the "true" interest

37. Warren, *supra* note 9, at 853.

38. See Driver, *supra* note 36, at 111-13; Wilkins, *supra* note 36, at 210-14.

39. To expand on this interpretation, a 15% simple interest per annum rate on the unpaid balance would equal roughly a 29% true interest rate. See *Falcone v. Palmer Ford, Inc.*, 242 Md. 487, 219 A.2d 808 (1966), interpreting the Maryland Retail Installment Sales Law, 7 MD. ANN. CODE art. 83, §§ 128-53 (1965), which permits the retailer to charge, in a Class 2 transaction, a \$12 per \$100 rate on the principal balance or the equivalent of roughly a 23% "true" rate. A Class 3 transaction permits a 15% rate on the unpaid balance or roughly a 29% "true" interest rate. See also *Van Asperen v. Darling Olds, Inc.*, 254 Minn. 62, 93 N.W.2d 690 (1958).

40. See JOHNSON, STUDIES IN CONSUMER CREDIT NUMBER 2, METHODS OF STATING CONSUMER FINANCE CHARGES 103-08 (Graduate School of Business, Columbia University 1961).

41. *Id.* at 125.

42. See *Story v. Livingston*, 38 U.S. (13 Pet.) 359, 371 (1839).

rate is applied, the finance charge derived from the eight per cent add-on rate permitted by section 1501(a) will never exceed the fifteen per cent ceiling of section 1501(b). A meaningless qualification would therefore be established if this interpretation were employed.

The third or constant ratio interpretation is based on the use of the constant ratio formula for computing a "true" interest rate,⁴³ which is merely an approximation of the actuarial or direct ratio rate.⁴⁴ This formula incorporates the concept that the interest or finance charge is amortized in equal dollar amounts for each installment period, and produces a rate which is always somewhat high and increasingly so on long term contracts. Because of this, some finance charges when computed using the eight per cent add-on rate will exceed fifteen per cent "simple interest per annum." This interpretation is therefore the only one that gives section 1501(b) meaning. But when one considers the burden that this interpretation places on the Department of Banking,⁴⁵ which is charged with providing a rate chart "calculated at the maximum service charge rates permitted under this act,"⁴⁶ as well as the distortions which the formula produces when the schedule of installments departs from the assumptions of the formula, he is justified in doubting that the General Assembly actually intended to implement this interpretation.

As an example of the distortions referred to, consider section 1503 which requires that the service charge in contracts providing for irregular installments be in accord with the rates permitted by section 1501. Presumably, the fifteen per cent ceiling of 1501(b) is applicable to irregular installment contracts. Employing the constant ratio formula, the fifteen per cent simple interest per annum ceiling produces "remarkable" results. To illustrate, again using a \$120 unpaid balance, a contract providing for twelve equal monthly payments of \$10.80 (service charge of \$9.60) would be within the fifteen per cent simple interest per annum limitation. However, if that same \$120 unpaid balance were for an air conditioner purchased in March to be repaid commencing in July in eight equal monthly payments, the fifteen per cent limitation produces an untrue or distorted ceiling. Under section 1501(a) the maximum permissible finance charge would again be \$9.60. But this \$9.60 yields a "true" interest rate of slightly more than twenty-one per cent under the constant ratio formula, which is a rate six per cent above the fifteen per cent ceiling. Thus the permissible rate would have to be adjusted downward to \$6.75. Incorporation of "true" interest or simple annual rate, where irregular payments are involved,

43. See JOHNSON, *op. cit. supra* note 40, at 108-10.

44. *Id.* at 124.

45. See KNOX, *supra* note 14, at 13, where the writer concludes that the rate chart will require something in the neighborhood of 74,000 cells of information.

46. PA. STAT. ANN. tit. 69, § 2002 (Supp. 1966). It is interesting to note that under this section, the Department of Banking is to provide rate charts which are to indicate permissible rates on various "principal balances," a term which is undefined in the act. See *supra* note 11.

therefore produces the anomalous result that the retailer must charge less for extending substantially greater credit.

It is submitted that section 1501(b) was merely a legislative attempt to incorporate "truth in lending" concepts into the new act with little insight as to the ramifications. Because of its ambiguous wording and because as eight per cent add-on rate is, in itself, a sufficient ceiling, section 1501(b) should be deleted from the act as an unsuccessful and ineffective attempt to create a second ceiling for permissible finance charges on retail installment contracts.⁴⁷

IV. NEGOTIABILITY AND ASSIGNMENT

In reality, many retail installment sales contracts involve three parties — the buyer, the seller and a financing agency.⁴⁸ The financing agency might become involved in the transaction either by making a direct loan to a buyer who uses the borrowed funds to make the purchase from the seller, or by purchasing the installment sales contract from the seller at a discount. The coverage of the new act extends only to the latter financing method.⁴⁹

Historically, a financing agency that became involved with the purchase of retail installment contracts attempted to insulate itself from the installment buyer's defenses against the seller. This insulated position was usually achieved by including a clause in the installment contract under which the buyer agreed not to assert against an assignee any claims or defenses that it had against the seller, or by the buyer executing a negotiable promissory note in conjunction with the installment contract which, when negotiated to the financing agency, gave the agency the status of a holder in due course.⁵⁰ The result was an installment buyer obligated to pay the financing agency for goods not conforming to the terms of the contract whose sole recourse was against a defaulting seller, who frequently could not be found.⁵¹

The new act contains provisions which address themselves to this problem. The effectiveness of these provisions is, unfortunately, somewhat dubious, particularly when considered in light of the provisions in its two companion acts. The act provides in section 1401(a) that:

No contract or obligation shall contain any provision by which (a)
The buyer agrees not to assert . . . a claim or defense arising out of

47. The Pennsylvania Department of Banking is apparently in accord with this conclusion, for the rate chart which they have prepared is based on a straight 8% add-on ceiling. Additionally, Sears, Roebuck and Co., one of the largest retailers in the nation, is preparing a rate chart for distribution among their sales personnel based solely on the 8% add-on ceiling of § 1501(a). This is being done on the assumption that the General Assembly intended to incorporate the direct ratio formula in the § 1501(b) ceiling. Interview with Philip M. Knox, Jr., Esquire, General Counsel for the Eastern Territory of Sears, Roebuck and Co., in Philadelphia, February 22, 1967.

48. Financing agency is defined in PA. STAT. ANN. tit. 69, § 1201(16) (Supp. 1966).

49. See text accompanying notes 74-77 *infra*.

50. See Comment, *supra* note 15, at 310-14.

51. See *Norman v. World Wide Distrib., Inc.*, 202 Pa. Super. 53, 195 A.2d 115 (1963).

the sale . . . against an assignee . . . other than as provided in section 1402.

Section 1402 provides:

No right of action or defense arising out of a retail installment sale which the buyer has against the seller . . . and which would be cut off by assignment,⁵² shall be cut off by assignment of the contract to any third party whether or not he acquires the contract in good faith and for value unless the assignee gives notice of the assignment to the buyer as provided in this section, and within forty-five days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer. . . . [Footnote added.]

Section 1402 effectively undermines the apparent intent of section 1401(a). An installment contract may in fact contain a clause whereby the buyer agrees not to assert any claim or defense arising out of the sale against an assignee, as long as the assignee complies with the notice requirements of section 1402 and doesn't receive a return written notice from the buyer stating any claims or defenses within forty-five days of the mailing of his notice. In permitting the buyer forty-five days to notify the assignee, the new act is more liberal than the California act⁵³ and the Pennsylvania Home Improvement Finance Act,⁵⁴ which contain similar provisions but allow the buyer only fifteen days to forward the necessary notification. However, the Motor Vehicle Sales Finance Act is even more consumer oriented in absolutely prohibiting provisions in contracts which relieve the assignee from "liability for any legal remedies which the buyer may have had against the seller under the contract. . . ."⁵⁵

The provisions in the new act concerned with the regulation of the negotiable notes used in conjunction with installment sales contracts provide an interesting contrast when compared with similar provisions of the Home Improvement Finance Act and the Motor Vehicle Finance Act. The new act provides that: "No retail installment account shall require or entail the execution of any note or series of notes by the buyer which when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the seller."⁵⁶ Essentially, this is the same prohibitory provision that appears in the Motor Vehicle Sales Finance Act.⁵⁷ But, in the new Installment Sales Act this prohibition applies only to revolving credit accounts. The sole provision relating to retail installment contracts is the section requiring that the entire agreement, including any promissory notes, must be embodied in a single document.⁵⁸ The act contains no express provision that is similar to the proviso

52. This phrase is alleged to have two possible interpretations when considered with § 1401(a). See Comment, *supra* note 6, at 752-54.

53. CAL. CIV. CODE § 1804.2.

54. PA. STAT. ANN. tit. 73, § 500-208 (Supp. 1966).

55. PA. STAT. ANN. tit. 69, § 615F (1965).

56. PA. STAT. ANN. tit. 69, § 1909 (Supp. 1966).

57. PA. STAT. ANN. tit. 69, § 615G (1965).

58. PA. STAT. ANN. tit. 69, § 1302(a) (Supp. 1966).

of the Home Improvement Finance Act prohibiting the execution of a negotiable promissory note, "which, when separately negotiated will cut off as to third parties any right of action or defense which the buyer may have against the contractor."⁵⁹ And the Home Improvement Finance Act goes even further to insure that there can be no negotiable notes involved in a home improvement transaction. That Act provides that while the contract itself may contain a promissory note, the note must include a statement that it is subject to the terms of the home improvement installment contract.⁶⁰ This requirement destroys negotiability under section 3-105(2) (a) of the Uniform Commercial Code.

Perhaps the General Assembly was of the opinion that the single document requirement was sufficient to adequately protect the consumer's interests. However, there are at least two conceivable loopholes in this reasoning in view of the terms of the statute. First, if a negotiable note were attached at the bottom of the contract along perforated dots, it could reasonably be argued that the entire agreement was embodied in a single document.⁶¹ There is no provision in the new act which prohibits the seller from later separating the note from the contract and negotiating it to a financing agency or other third party who might qualify as a holder in due course. Secondly, even if the note is not detachable and the note and agreement are clearly embodied in the same document, the negotiability of the note will not be affected.⁶² If the note authorizes a confession of judgment before maturity, however, its negotiability will be destroyed.⁶³ The possibility that a negotiable note may be sanctioned by the new act would defeat section 1402, which was undoubtedly designed to prevent the assignee of an installment contract from achieving an insulated position until forty-five days after mailing notice of the assignment.

Even if the new act is construed as permitting a negotiable note with the contract, the holder of that note is still subject to the good faith and notice requirements of the Uniform Commercial Code.⁶⁴ These requirements may be difficult to meet, particularly when the holder of the note is a financing agency which has a regular course of dealing with the seller.⁶⁵ However, the possibility of further negotiation to a new holder who may qualify as a holder in due course cannot be ignored.

Finally, the possibility exists that a seller may violate the act and require that the buyer execute two separate documents — the installment contract itself and a separate negotiable note. Of course, the act provides

59. PA. STAT. ANN. tit. 73, § 500-207(a) (Supp. 1966).

60. PA. STAT. ANN. tit. 73, § 500-207(b) (Supp. 1966).

61. See Comment, *Legislative Regulation Of Retail Installment Financing*, 7 U.C.L.A.L. REV. 623, 755 (1960).

62. PA. STAT. ANN. tit. 12A, §§ 3-104, 3-105 (Supp. 1966).

63. PA. STAT. ANN. tit. 12A, § 3-112(1)(d) (Supp. 1966). See *Fidelity Trust Co. v. Gardiner*, 191 Pa. Super. 17, 155 A.2d 405 (1959); *Bittner v. McGrath*, 186 Pa. Super. 477, 142 A.2d 323 (1958).

64. PA. STAT. ANN. tit. 12A, § 3-302(1)(b)-(c) (Supp. 1966).

65. See *Norman v. World Wide Distrib., Inc.*, 202 Pa. Super. 53, 195 A.2d 115 (1963).

for penal sanctions against the seller for willfully and intentionally violating the act.⁶⁶ But what of the holder who takes the note for value, in good faith and without notice? Shall he be precluded from recovery on the note merely because the seller violated the provisions of the act? One writer commenting on the California act concludes:

The legislature should, however, made it clear that if a negotiable note is taken in violation of the Act, a holder without notice of the transaction out of which it arose should be given the protection otherwise afforded one who qualifies as a holder in due course.⁶⁷

V. MISCELLANEOUS

In enacting ambitious and far-reaching legislation, it is understandable that errors in drafting will occur. Unfortunately, misplaced words or omitted phrases in many cases give an unintended and illogical meaning to legislation. When these errors and omissions occur, it is only a matter of conjecture as to the true legislative intent. Consider the following provisions: In section 1501(c) a minimum service charge of \$.70 per month for a minimum of six months is permitted for retail installment contracts. This establishes a \$4.20 minimum service charge for any installment contract. Section 1501(c) is reiterated in a later provision of the act dealing with Revolving Credit Accounts (section 1904(b)). However, establishing a six month minimum period in which to charge the seventy cent monthly charge can hardly have meaning with respect to the normal revolving account on which the buyer has debits and credits each month. This anomaly has prompted one writer to conclude that, "It can only be assumed that language drafted for the instalment contract section was arbitrarily placed in the revolving account section without editing."⁶⁸

To the other extreme is section 1603 which grants the buyer a right to a refund for prepayment. Undoubtedly, the General Assembly intended to reiterate the wording of the similar provision in the California act,⁶⁹ which establishes the "Rule of 78"⁷⁰ as the basis for refund, but in the transcription a critical phrase was apparently omitted.⁷¹ Finally, section 1806 which purports to limit the imposition of the minimum service charge of article 5 with respect to add-on sales, in actuality, refers to the maximum service charge ceiling of article 5.⁷²

66. PA. STAT. ANN. tit. 69, § 2201 (Supp. 1966).

67. See Comment, *supra* note 62, at 758.

68. Knox, *supra* note 14, at 11.

69. CAL. CIV. CODE § 1806.3. See also PA. STAT. ANN. tit. 73, § 500-303(a) (Supp. 1966).

70. The "rule of 78" operates to give the buyer a refund on the service charge for prepayment. The numbers one through twelve when added equal 78 which provides the denominator for the fraction of the charge refunded. The numerator will depend on the number of months which have elapsed before prepayment is made. For a further explanation of the rule see 1 CCH INSTALLMENT CREDIT GUIDE ¶ 38.

71. The words, "not yet due bears to the sum of all the periodic monthly time balances," should be inserted after the word "balances" and before the word "under" in § 1603.

72. Section 1806 should read "as provided in subsection (c) of section 501." (Footnote omitted.) See CAL. CIV. CODE § 1808.6.

No discussion of retail installment sales legislation would be complete without reference to the lender-vendor credit dichotomy,⁷³ which stems from the refusal of the majority of state courts to equate the service charge imposed on installment sales with interest charge imposed for the use of money.⁷⁴ The distinction seems to lie in the fact that the service charge is considered to be incidental to the gravamen of the transaction — a sale of goods — while interest is historically the price one must pay for the use of another's money. Although the courts of two states have recently abrogated this dichotomy,⁷⁵ the Pennsylvania Superior Court has affirmed it in *Equipment Finance, Inc. v. Granmas*,⁷⁶ holding that service charges assessed on installment sales are not subject to the Pennsylvania Usury Statute. Because of the state's commitment to this dichotomy, the Pennsylvania retailer, prior to the enactment of the Goods and Services Installment Sales Act, was legally permitted to charge that rate which the "traffic would bear" on his goods and services installment sales. This new legislation effaces the effect of the dichotomy in Pennsylvania.

VI. CONCLUSION

The enactment of the Pennsylvania Goods and Services Installment Sales Act is but another chapter in the development of statutes designed to regulate installment buying. The need for this type of legislation is, in part, reflected by the large body of state law on the subject. This state by state approach to legislation in the consumer credit field has, however, been productive of such great disparity that it provided the impetus for the drafting of a proposed Uniform Consumer Credit Code. The new Pennsylvania act lends support to the enactment of such a Code, particularly when contrasted with its two companion acts — The Motor Vehicle Sales Finance Act and the Home Improvement Finance Act. The provisions of the new act relating to the regulation of a maximum permissible finance charge, and the lack of express provisions prohibiting the use of negotiable promissory notes in conjunction with the contract, are equivocal and misleading. It is impossible to ascertain whether the General Assembly intended to modify the standards applied in the two preceding acts dealing with installment sales, or whether the statute was merely an *ad hoc* enactment as a matter of political expediency. It can only be hoped that the proposed Uniform Consumer Credit Code will bring some uniformity out of the disaccord that exists in retail installment sales legislation.

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73. See CURRAN, *op. cit. supra* note 8, at 13. See also Britton & Ulrich, *The Illinois Retail Installment Sales Act — Historical Background and Comparative Legislation*, 53 NW. U.L. REV. 137, 140-48 (1958); Warren, *Regulation of Finance Charges in Retail Instalment Sales*, 68 YALE L.J. 839, 840-51 (1959).

74. For an excellent summary of this concept, see *Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 336, 132 S.E.2d 692, 694 (1963).

75. Arkansas and Nebraska. See CURRAN, *op. cit. supra* note 8, at 84-90, for an extensive treatment of the cases in these two states.

76. 207 Pa. Super. 363, 218 A.2d 81 (1966).