

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

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Legislative Document

No. 1374

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H. P. 991

House of Representatives, February 23, 1965

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

JEROME G. PLANTE, Clerk

Presented by Mr. Lane of Waterville.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-FIVE

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AN ACT Relating to Retail Installment Sales.

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Be it enacted by the People of the State of Maine, as follows:

**R. S., T. 9, Part 9, additional.** Title 9 of the Revised Statutes is amended by adding a new part 9, as follows:

**'PART 1**

**RETAIL INSTALLMENT SALES**

**CHAPTER 360**

**RETAIL INSTALLMENT SALES**

§ 3721. Short title

Chapter 360 may be cited as "The Retail Installment Sales Act."

§ 3722. Definitions

In this chapter, unless the context or subject matter otherwise requires:

1. **Cash sale price.** "Cash sale price" means the cash sale price stated in a retail installment contract or obligation for which the seller would sell or furnish to the buyer and the buyer would buy or obtain from the seller the goods or services which are the subject matter of a retail installment contract or obligation if the sale were a sale for cash instead of a retail installment sale. The cash sale price may include any taxes and cash sale prices for accessories and services, if any, included in a retail installment sale.

2. **Credit service charge.** "Credit service charge" means that part of the

entire amount agreed to be paid for the goods or services which exceeds the aggregate of the cash sale price thereof and the amounts, if any, included in a retail installment sale for insurance and official fees.

3. **Financing agency.** "Financing agency" means a person engaged in this State, in whole or in part, in the business of purchasing retail installment contracts, obligations or credit agreements or indebtedness of buyers under credit agreements from one or more retail sellers or entering into credit agreements with retail buyers as provided in section 3735, subsection 11, but shall not include a retail seller. The term includes but is not limited to a bank, trust company, private banker, industrial bank or investment company, if so engaged, but shall not include a retail seller.

4. **Goods.** "Goods" means all chattels personal, other than things in action or money, sold for other than a commercial or business use or for purpose of resale. The term includes goods which at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable therefrom, but does not include a motor vehicle as defined in part 8.

In the case of a retail installment credit agreement, the term also includes all chattels personal, other than things in action or money, sold for a commercial or business use.

5. **Holder.** "Holder" means the retail seller who acquires a retail installment contract, obligation or credit agreement executed, incurred or entered into by a retail buyer, or if the contract, obligation or credit agreement is purchased by a financing agency or other assignee, the financing agency or other assignee.

6. **Official fees.** "Official fees" means the fees required by law and actually to be paid to the appropriate public officer to perfect a lien or other security interest, on or in goods, retained or taken by a seller under a retail installment contract.

7. **Principal balance.** "Principal balance" means the cash sale price of the goods or services which are the subject matter of the retail installment sale, plus the amounts, if any, included in a retail installment sale for insurance and official fees, minus the amount of the buyer's down payment in money or goods.

8. **Retail buyer.** "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller.

9. **Retail installment contract.** "Retail installment contract" or "contract" means an agreement entered into in this State, pursuant to which the title to, the property in or a lien upon goods, which are the subject matter of a retail installment sale, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the goods upon full compliance with the terms of the contract. The term does not include a contract which is intended to be and is ultimately insured or guaranteed by the federal housing commis-

sioner or under Title 3 of the Act of Congress entitled "Servicemen's Readjustment Act of 1944" by the Federal Government or the State of Maine, or any agency of either.

10. Retail installment credit agreement. "Retail installment credit agreement" or "credit agreement" means an agreement entered into in this State, pursuant to which the buyer promises to pay, in installments, his outstanding indebtedness from time to time to a retail seller, not evidenced by a retail installment contract or obligation, for one or more items of goods or services, or merchandise certificates to be used solely in exchange for goods and services with a cash sale price in the face amount of such certificates and not redeemable in cash, whenever purchased or obtained, which provides for a service charge and under which installment payments apply to his outstanding indebtedness from time to time. The term includes a retail installment credit agreement entered into by a financing agency with a retail buyer as provided in section 3735, subsection 11.

11. Retail installment obligation. "Retail installment obligation" or "obligation" means an agreement, entered into in this State, pursuant to which the buyer promises to pay, in installments, the time sale price or prices of goods or services, or any part thereof. The term does not include a retail installment contract, a retail installment credit agreement or an obligation which is intended to be and is ultimately insured or guaranteed by the federal housing commissioner or under Title 3 of the Act of Congress entitled "Servicemen's Readjustment Act of 1944" or by the Federal Government or the State of Maine, or any agency of either.

12. Retail installment sale. "Retail installment sale" or "sale" means a sale of goods, or the furnishing or rendering of services, or an agreement to furnish or render services, by a retail seller to a retail buyer for a time sale price payable in installments.

13. Retail seller. "Retailer seller" or "seller" means a person who sells goods or furnishes or renders or agrees to furnish or render services to a retail buyer. The term includes the lessor under a lease of a department in a shop, store or other establishment if the lessor is liable to customers in respect to goods sold or services furnished or rendered by the leased department and the other operations thereof.

14. Service charge. "Service charge" means all charges incident to investigating and making a retail installment credit agreement and for the extension of credit thereunder.

15. Services. "Services" means:

A. In the case of a retail installment contract, work, labor and services furnished, or agreed to be furnished, for other than a commercial or business use, in the delivery, installation, servicing, repair or improvement of goods or repairs, alterations or improvements upon or in connection with real property;

B. In the case of a retail installment obligation, services of any kind fur-

nished or rendered or agreed to be furnished or rendered, for other than a commercial or business use, except that services shall not mean nor include services for which the tariffs or the rates, charges, cost or expense is required by law to be filed with or determined or approved by the State or Federal Government or any official department, division, commission or agency of the State of Maine or of the United States; and

C. In the case of a retail installment credit agreement, services of any kind rendered or furnished or agreed to be rendered or furnished by a retail seller.

16. Time balance. "Time balance" means the total of the principal balance and the amount of the credit service charge, if any.

17. Time sale price. "Time sale price" means the total of the cash sale price of the goods or services and the amounts, if any, included for insurance, official fees and credit service charge.

### § 3723. Provisions of retail installment contracts and obligations

1. General requirements. A retail installment contract or obligation shall be dated and in writing; the printed portion thereof shall be in at least 8-point type.

A contract or obligation shall contain the entire agreement of the parties with respect to the goods and services:

A. Both at the top of the contract or obligation and directly above the space reserved for the signature of the buyer, the words **RETAIL INSTALLMENT CONTRACT** or **RETAIL INSTALLMENT OBLIGATION**, as the case may be, in at least 10-point bold type; and

B. A notice in at least 8-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.

2. Contract items. Except as provided in section 3732, a contract or obligation shall:

A. Contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and an adequate description of the services and goods, including the make and model, if any, in the case of goods customarily sold by make and model; and

B. Set forth the following items:

(1)

(a) The cash sale price of the goods and services which are the subject matter of the retail installment sale and

(b) The cash sale price of any accessories and services not included in division (a), separately itemized;

- (2) The amount of the buyer's down-payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in;
- (3) The difference between subparagraph (1) and subparagraph (2);
- (4) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage;
- (5) The amount, if any, of official fees;
- (6) The principal balance, which is the sum of subparagraphs (3), (4) and (5);
- (7) The amount of the credit service charge;
- (8) The time balance, which is the sum of subparagraphs (6) and (7), payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;
- (9) The time sale price;
- (10) If any installment substantially exceeds in amount any prior installment other than the down-payment, the following legend printed in 10-point bold type or typewritten: **THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS.** followed, if there be but one larger installment, by: **AN INSTALLMENT OF \$..... WILL BE DUE ON .....** or, if there be more than one larger installment, by: **LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: .....** (Insert the amount or amounts of every larger installment and its due date). In the case of a retail installment obligation, **OBLIGATION** shall be substituted for **CONTRACT** in the required legend.

The subparagraphs need not be stated in the sequence or order set forth above; additional subparagraphs may be included to explain the computations made in determining the amount to be paid by the buyer.

The amount of the credit service charge may be expressed as a simple interest charge not exceeding 6% per year computed on the principal balance unpaid from time to time; if so expressed, the time balance and the time sale price need not be set forth.

3. Blank spaces. Except as provided in section 3732, no contract or obligation shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed; however, if delivery of the goods is not made at the time of the execution of the contract or obligation and it so provides, the identifying numbers or marks of the goods and the due date of the first installment may be left blank and later inserted by the seller in the seller's counterpart of the contract or obligation after it has been signed by the buyer.

4. Insurance. If the cost of any group credit life or other insurance is in-

cluded in the contract or obligation and a separate charge is made to the buyer for such insurance:

A. The contract or obligation shall state whether the insurance is to be procured by the buyer or the seller;

B. The amount, if any, so included for such insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the Insurance Commissioner for such insurance by the insurer; and, if such group credit life or other insurance is cancelled, the refund for unearned insurance premiums received or receivable by the holder of the contract, or the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract therefor, together with, in either case, the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing installments of the retail installment contract, provided that no such credit need be made if the amount thereof would be less than \$1; and

C. If the insurance is to be procured by the seller or holder, he shall, within 30 days after delivery of the goods or furnishing of the services under the contract or obligation, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract or obligations, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured.

5. Delinquency and collection charge. A contract or obligation may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5% of such installment or \$5, whichever is less, provided that only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default. A contract or obligation may also provide for the payment of attorney's fees not exceeding 20% of the amount due and payable under such contract or obligation if it is referred to an attorney not a salaried employee of the seller or holder for collection.

6. Original document. All of the terms of an obligation need not be contained in a single document but if they are not then there shall be an original document executed by the parties containing provisions making it applicable to purchases of goods or services, which may not exceed a cash sale price of \$175 on each purchase, to be made by the buyer from time to time from a retail seller, which document, together with sales slips and other written statements relating to the sale of such goods or services as hereinafter provided, shall constitute a retail installment obligation and shall contain the entire agreement of the parties. In such cases, the original document shall contain:

A. A legend as provided in subsection 1, paragraph A.

B. A notice to the buyer as provided in subsection 1, paragraph B.

C. The names of the seller and the buyer.

D. The place of business of the seller and the residence or place of business of the buyer as specified by the buyer.

E. The number of installment payments.

F. The amount or rate of the maximum credit service charge applicable to purchases thereunder.

At the time of the first purchase under such document, the seller shall give the buyer sales slips or other statements relating to the sale of goods or services which, together with such document, shall set forth all the information required by subsection 2, paragraph B.

At the time of each succeeding purchase under such document, the seller shall give the buyer sales slips or statements which shall contain at the top thereof a legend in at least 8-point bold type: **PART OF A RETAIL INSTALLMENT OBLIGATION**; and shall set forth the following subparagraphs:

- (1) An adequate description of the goods, accessories and services sold or furnished, including the make and model, if any, in the case of goods customarily sold by make and model;
- (2) The cash sale price of the goods, accessories and services sold or furnished;
- (3) The amount of the buyer's down-payment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in;
- (4) The difference between subparagraph (2) and subparagraph (3);
- (5) The amount, if any, of official fees and insurance, specifying the coverages and the cost of each type of coverage;
- (6) The principal balance, which is the sum of subparagraphs (4) and (5);
- (7) The amount of the credit service charge;
- (8) The time balance, which is the sum of subparagraphs (6) and (7), the amount of each installment expressed in dollars, and the due date or period thereof; and
- (9) The time sale price.

If subparagraphs (7), (8) and (9) are not set forth at the time of purchase, the seller shall promptly thereafter, and in any event within 10 days from the date of such purchase, deliver, mail or cause to be mailed to the buyer at his address shown on the seller's records, a statement or account book recording such information. Unless the seller does so, the buyer shall have an unconditional right to cancel such purchase and to receive an immediate refund of any payments made and redelivery of all goods traded in to the seller on account of or in contemplation of the purchase; upon the written request of the buyer the seller shall prove the accuracy of the calculations in such statement.

Such sales slips, statements and account books with respect to the first such purchase shall, combined with the original document, constitute the obliga-



tion for such purchase; and, on each succeeding purchase pursuant to such original document, the obligation therefor as represented by such original document and such sales slips and written statements as above required shall constitute a subsequent obligation under section 3732.

§ 3724. Merchandise certificates and obligations therefor.

1. Issuance. A retail seller may issue merchandise certificates to a retail buyer, to be paid for in installments and to be used solely in exchange for goods and services with a cash sale price in the face amount of such certificates and not redeemable in cash, pursuant to a document executed by the parties as hereinafter provided, which document, notwithstanding the definition of obligations contained in section 3722, subsection 7, shall constitute a retail installment obligation for the purpose of this chapter, shall contain the entire agreement of the parties, and shall be subject to sections 3725 to 3734, except the provisions of the 2nd sentence of section 3727 and section 3732, subsection 1, paragraph C.

2. Contents. On each issue of merchandise certificates, the document evidencing the obligation therefor shall set forth a legend as provided in section 3723, subsection 1, paragraph A, a notice to the buyer as provided in section 3723, subsection 1, paragraph B, the names of the seller and the buyer, the residence or place of business of the buyer as specified by the buyer, the face amount of the merchandise certificates issued, and all the information required by section 3723, subsection 2, paragraph B, subparagraphs 2 to 10.

3. Credit service charge. A seller may, in such a document, contract for and, if so contracted for charge, receive and collect a credit service charge at rates not exceeding those provided under section 3726. Such credit service charge shall be computed on the face amount of merchandise certificates issued to the buyer, less down-payment, if any.

4. Returns. The buyer shall have the right to return to the seller at any time all merchandise certificates which have not been exchanged for goods and services, and the seller shall thereupon credit the buyer with the full face amount of such unused merchandise certificates returned and the amount of the pro rata credit service charge thereon, which shall be computed as of the date of issuance of the merchandise certificates so returned. Where the amount of the refund of such credit charge is less than \$1 no refund need be made.

5. Required provisions.

A. Merchandise certificates issued under this section or the cover of the booklet in which they are bound, shall bear:

(1) A legend in at least 8-point bold type stating that the buyer may return unused merchandise certificates so purchased at any time and that the seller will give the buyer credit for the full face amount of any certificates so returned and credit for the pro rata credit service charge if the same is \$1 or more;

(2) A legend in at least 8-point bold type reading substantially as follows:  
If you wish to purchase, with merchandise certificates a single item of goods

or services of greater value than the merchandise certificates you now hold, you may save credit service charge by returning your unused merchandise certificates for credit and purchasing new certificates; and

(3) In the event the statements required by subparagraphs (1) and (2) are set forth on the cover of a booklet in which the merchandise certificates are bound, each certificate shall bear a notice, "NOT GOOD IF DETACHED".

B. If a retail seller issues merchandise gift certificates to a retail buyer to be paid for in installments in good faith, and in reliance upon a retail buyer's statement that the buyer intends to transfer it to another as a gift, then such certificate need not set forth the legends required by subparagraphs (1) and (2); provided the certificate shall bear the legend "GIFT CERTIFICATE" and the seller shall give the buyer at the time of issuance of such certificate a statement, or facsimile of such certificate, which shall identify such certificate, and shall contain the legend required by subparagraphs (1) and (2).

#### § 3725. Restrictions on retail installment contracts and obligations

1. Execution of notes. Except as provided in subsection 2, no contract or obligation 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.

2. Exception. If the transaction which gives rise to an obligation is the furnishing of goods or services for repairs, alterations or improvements upon or in connection with real property, the obligation may require or entail the execution of a promissory note but only if it bears on the same side of the note as contains the maker's signature the following legend in at least 10-point bold type: "The transaction which gives rise to this note is the furnishing of goods or services for repairs, alterations or improvements upon or in connection with real property. Do not sign this note until the work is fully completed." Section 3723, subsection 5, and sections 3730 and 3731 shall apply to any such note. No such note which does not set forth the amount of the credit service charge included in its face amount may be negotiated or otherwise transferred without the simultaneous delivery of the related retail installment obligation. The indorsement of any such note by the payee shall incorporate in substance the payee's representations and warranties that the transaction which gave rise to the note was the furnishing of goods or services for repairs, alterations or improvements upon or in connection with real property in accordance with a retail installment obligation between the payee and the maker or makers of the note and that the furnishing of such goods or services has been completed in accordance with such retail installment obligation. Neither the incorporation in a note of the legend not to sign it until the work is fully completed nor the incorporation in the indorsement of a note of the representations and warranties required by this subsection nor the omission of any or all such representations or warranties shall affect the negotiability of the note or prevent the holder thereof from being a holder in due course.

3. Representations and warranties. The payee of a promissory note provided for in subsection 2 and any officer, director, partner or agent of such a

payee who, with intent to procure the purchase or discount of such a note by another from the payee, willfully and falsely makes the representations and warranties provided for in subsection 2, or willfully fails to make any or all such representations or warranties is guilty of a misdemeanor.

4. Prohibited provisions. No contract or obligation shall contain any provision by which:

A. The buyer agrees not to assert against an assignee a claim or defense arising out of the sale, but it may contain such a provision as to an assignee who acquires the contract, obligation or obligation together with any related note in good faith and for value and who has no notice of the facts giving rise to the claim or defense within 10 days after such assignee mails to the buyer, at his address shown on the contract or obligation, notice of the assignment, indicating or containing in the notice or in an enclosure with the notice: The name and address of the assignee, the names of the seller and the buyer and a description of the services and goods which are the subject matter of the contract, including the make and model, if any, in the case of goods customarily sold by make and model, the time balance of the contract, the number and amount of installments in which the time balance is payable and the due date or period thereof, together with the following legend printed or written in a size equal to at least 8-point bold type:

**NOTICE:**

1. IF THE WITHIN STATEMENT OF YOUR TRANSACTION WITH THE SELLER IS NOT CORRECT IN EVERY RESPECT: OR

2. IF THE VEHICLE OR GOODS DESCRIBED IN OR IN AN ENCLOSURE WITH THIS NOTICE HAVE NOT BEEN DELIVERED TO YOU BY THE SELLER OR ARE NOT NOW IN YOUR POSSESSION; OR

3. IF THE SELLER HAS NOT FULLY PERFORMED ALL HIS AGREEMENTS WITH YOU; YOU MUST NOTIFY THE ASSIGNEE IN WRITING AT THE ADDRESS INDICATED IN OR IN AN ENCLOSURE WITH THIS NOTICE WITHIN TEN DAYS FROM THE DATE OF THE MAILING OF THIS NOTICE; OTHERWISE, YOU WILL HAVE NO RIGHT TO ASSERT AGAINST THE ASSIGNEE ANY RIGHT OF ACTION OR DEFENSE ARISING OUT OF THE SALE WHICH YOU MIGHT OTHERWISE HAVE AGAINST THE SELLER.

B. In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder.

C. A power-of-attorney is given to confess judgment in this State, or an assignment of wages is given.

D. The seller or holder of the contract or obligation or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods.

E. The buyer waives any right of action against the seller or holder of the contract or obligation, or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or obligation or in the repossession of goods.

F. The buyer executes a power-of-attorney appointing the seller or holder of the contract or obligation, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or obligation or in the repossession of goods.

G. The buyer relieves the seller from liability for any legal remedies which the buyer may have against the seller under the contract or obligation or any separate instrument executed in connection therewith.

Any such prohibited provision shall be void but shall not otherwise affect the validity of the contract or obligation.

In the case of a retail installment obligation by the terms of which the seller agrees to furnish or render services more than 10 days after the assignee of the obligation mails to the buyer notice of assignment thereof, as provided in paragraph A, then, notwithstanding that paragraph, the assignee takes the obligation subject to any defense which would be available to the buyer against the seller and which is predicated upon the seller's subsequent nonperformance of the agreed services, unless the seller's non-performance results from the act, omission or default of the buyer or the person to whom the services are to be furnished or rendered by the seller.

#### § 3726. Credit service charge limitation

1. Maximum charge. A seller may, in a retail installment contract or obligation, contract for and, if so contracted for, the holder thereof may charge, receive and collect a credit service charge computed on the principal balance of the contract or obligation from the date thereof to and including the date when the final installment is payable, at not exceeding the following rates:

A. On so much of the principal balance as does not exceed \$500, \$10 per \$100 per year;

B. If the principal balance exceeds \$500, \$8 per \$100 per year on the excess over \$500; or

C. If the credit service charge so computed is less than \$12, \$12, but if the due date of the last installment of the contract or obligation is 8 months or less after its date, \$10.

2. Computation. Such credit service charge shall be computed on the principal balance on contracts or obligations payable in successive monthly installments substantially equal in amount for a period of one year. On contracts or obligations providing for installments extending for a period less than or greater than one year, the credit service charge shall be computed proportionately.

3. Unequal or irregular payments. When a retail installment contract or obligation provides for unequal or irregular installments, the credit service

charge shall be at the effective rate provided for in subsection 1, having due regard for the schedule of installments.

4. Service charge inclusive. The credit service charge shall be inclusive of all charges incident to investigating and making the contract or obligation, and for the extension of the credit provided for in the contract or obligation, and no fee, expense or other charge whatsoever shall be taken, received, reserved or contracted for except as otherwise provided in this chapter.

§ 3727. Delivery of copy of contract or obligation; buyer's acknowledgment

The seller shall deliver to the buyer, or mail to him at his address shown on the contract or obligation, an executed copy thereof. Until the seller does so, a buyer who has not received the goods or services shall have an unconditional right to cancel the contract or obligation and to receive immediate refund of all payments made and redelivery of all goods traded in to the seller on account of or in contemplation of the contract or obligation. Any acknowledgment by the buyer or delivery of a copy of the contract or obligation shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract or obligation, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section, of delivery of a copy of a contract or obligation shall be presumptive evidence of such delivery and of compliance with this section and section 3723, subsection 3, in any action or proceeding by or against an assignee of the contract or obligation without knowledge to the contrary when he purchases the contract or obligation.

§ 3728. Notice of assignment; payments

Unless the buyer has notice of actual or intended assignment of a contract, obligation, or credit agreement payment thereunder made by the buyer to the last known holder of such contract, obligation or credit agreement shall be binding upon all subsequent holders or assignees.

§ 3729. Statements of account; receipts

At any time after its execution, but not later than one year after the last payment thereunder, the holder of a contract or obligation shall, upon written request of the buyer, give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. Such a statement shall be supplied by the holder once each year without charge, if any additional statement is requested by the buyer, the holder shall supply such statement to the buyer at a charge not exceeding \$1 for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

§ 3730. Credit upon anticipation of payments

Notwithstanding the provisions of any contract or obligation to the contrary, any buyer may pay it in full at any time before the maturity of the final installment of the time balance thereof and if he does so shall receive and be entitled to receive a refund credit thereon and if the contract or obligation included an amount for group credit life insurance a further refund credit thereon

for such anticipation, whether or not the maturity of the time balance of the contract was accelerated by the holder by reason of the buyer's default. The amount of any such refund credit shall represent at least as great a proportion of the credit service charge or, if the contract or obligation has been extended, deferred or refinanced, of the additional charge therefor, as the sum of the periodic time balances after the month in which prepayment is made bears to the sum of all the periodic time balances under the schedule of installments in the contract or obligation or, if the contract or obligation has been extended, deferred or refinanced, as so extended, deferred or refinanced. Where the amount of the credit for anticipation of payment is less than \$1 no refund need be made. Where the earned credit service charge amounts to less, there may be retained an amount equal to the minimum credit service charge applicable.

The amount of the further refund credit for group credit life insurance shall be equal to the excess of the amount included in the contract for group credit life insurance over the premiums paid or payable by the holder of the contract for such insurance, if such premiums were paid or payable periodically, or the refund for unearned group credit life insurance premium paid or payable in a lump sum, provided that no such further refund credit need be made if the amount thereof would be less than \$1.

#### § 3731. Refinancing

1. Extension of payments. The holder of a retail installment contract or obligation may, upon agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The agreement for such extension or deferral must be in writing and signed by the parties thereto. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract or obligation, subject to section 3723, subsection 4.

2. Refinancing unpaid time balance. The holder of a retail installment contract or obligation may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance of the contract or obligation by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same, but such refinance charge shall be based upon the amount

refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 3730 if he had prepaid in full his obligations under the contract or obligation, but in computing such refund credit there shall not be allowed the minimum earned credit service charge as authorized by such section, and may not exceed the rate of credit service charge provided under section 3726. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or obligation of premiums for continuing in force, until the maturity of the contract or obligation as refinanced, any insurance coverages provided for therein, subject to section 3723, subsection 4. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount of the credit service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance and the new schedule of installment payments.

§ 3732. Add-ons to any consolidations of retail installment contracts and obligations

1. Consolidated balance. A retail installment contract or obligation which otherwise conforms to the requirements of this chapter may contain the promise or agreement of the buyer to pay in substantially equal periodic installments the consolidated total of the principal balance thereof and the unpaid time balance or balances owing by the buyer under one or more previous contracts or obligations, together with a credit service charge; if it does so:

A. The contract or obligation shall set forth the amount of and the period between the installments to be paid by the buyer, or the number and the due date of the installments to be paid by the buyer, or, otherwise, a statement that either the amount of and the period between the installments to be paid by the buyer shall be the same as in that contract or obligation, included in the consolidated total, which provides for the highest rate of repayment, or the due date of the last installment to be paid by the buyer and the period between the installments shall be the same as in that contract or obligation, included in the consolidated total, which is the last to mature.

B. Subject to section 3726, the credit service charge to be included in such consolidated total may equal but shall not exceed the larger of the amounts determined by applying the credit service charge at the applicable rate or amount specified in that section:

(1) To the total of the principal balance of the subsequent contract or obligation and the principal balance of any previous contract or obligation included in the consolidated total determined by deducting from the then unpaid time balance thereof any then unearned credit service charge in an amount not less than the refund credit for anticipation provided for in section 3730, computed, however, without the allowance of any minimum earned credit service charge, for the period from the date thereof to and including the date when the final installment of such consolidated total is payable; or

(2) To the principal balance of the subsequent contract or obligation for the period from the date thereof to and including the date when the final installment of such consolidated total is payable and, if the due date of the final installment of such consolidated total is later than the due date of the final installment of any previous contract or obligation included in the consolidated total, on the time balance then unpaid on such previous contract or obligation from the date when the final installment thereof was payable to the date when the final installment of such consolidated total is payable; if the credit service charge on any contract or obligation included in the consolidated total exceeded or exceeds the credit service charge computed at the rate specified in section 3726, subsection 1, paragraph A or B.

Provided, the maximum credit service charge shall not exceed \$8 per \$100 per year on that portion of the amount of the principal balance of the subsequent contract or obligation included in the consolidated total by which the consolidated total exceeds \$500.

C. Except as required by paragraph A, the subsequent contract or obligation need not contain subparagraphs (7), (8) or (9) otherwise required by section 3723, subsection 2, paragraph B, but, if it does not, must, at the time the buyer signs the contract or obligation, contain a clear statement of the maximum rate, not exceeding that permitted by section 3726, at which the credit service charge will be computed.

D. The unpaid time balance owing on any previous contract or obligation included in the consolidated total, the total credit service charge, the consolidated total indebtedness of the buyer and the terms of payment thereof shall be inserted in or attached to the subsequent contract or obligation and, except as otherwise provided in paragraph A, may be so inserted in or attached to the seller's counterpart thereof after it is signed by the buyer; in such case the seller shall promptly and in any event within 10 days from the date of the subsequent contract or obligation deliver, mail or cause to be mailed to the buyer at his address shown on the subsequent contract or obligation a statement of the items so inserted or attached; upon the written request of the buyer, the seller shall prove the accuracy thereof.

2. Goods under previous contract as security. Where a buyer makes any subsequent purchase of goods under a contract from a seller from whom he had previously purchased goods under one or more contracts and the amount due under such previous contract or contracts have not been fully paid, and where the total of the time balance of the subsequent contract and the unpaid time balances owing by the buyer under the previous contracts does not exceed \$3,000, such contract, if it otherwise conforms to the requirements of this chapter, may provide that the goods purchased under the previous contract or contracts shall be security for the goods purchased under the subsequent contract but only until such time as the purchase price under the previous contract or contracts is fully paid, or 20% of the time sale price of the goods purchased under the subsequent contract has been paid, whichever event first occurs.

3. Application of payments. When such subsequent purchase is made, the entire amount of all payments made previous thereto shall be deemed to have been applied toward the payment of the previous purchase or purchases. Each



payment thereafter received shall be deemed to be allocated to all of the various purchases in the same proportion or ratio as the original cash sale prices of the various purchases bear to one another; where the amount of each installment payment is increased in connection with the subsequent purchase, the subsequent payments, at the seller's election, may be deemed to be allocated as follows: An amount equal to the original rate, to the previous purchase, and an amount equal to the increase, to the subsequent purchase. However the amount of any initial or down-payment on the subsequent purchase shall be deemed to be allocated in its entirety to such purchase. Subsections 1 and 2 shall not apply to cases involving equipment, parts or other merchandise attached or affixed to goods previously purchased or repairs or services rendered by the seller in connection therewith at the buyer's request.

§ 3733. Terms of purchase by financing agency

Notwithstanding any contrary provision of the personal property law, lien law, banking law or other law:

1. Purchase of contracts. A financing agency may purchase a retail installment contract, obligation or credit agreement, or indebtedness of a buyer under a credit agreement, from a seller on such terms and conditions and for such price as may be mutually agreed upon; and

2. Validity. No filing of the assignment, no notice to the buyer of the assignment, and no requirement that the seller be deprived of dominion over payments upon the contract, obligation or credit agreement or over the goods if repossessed by or returned to the seller, shall be necessary to the validity of a written assignment of a contract, obligation or credit agreement, or indebtedness under a credit agreement, as against creditors, subsequent purchasers, pledgees, mortgagees or encumbrancers of the seller.

§ 3734. Cancellation

After the payment of all sums for which the buyer is obligated under a contract or obligation, and upon written demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such one or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all security in the goods.

§ 3735. Retail installment credit agreements

1. General provisions. A retail installment credit agreement shall be dated and in writing and the printed portion thereof shall be in at least 8-point type. No retail installment credit agreement shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed by the buyer. The seller, before he shall be able to avail himself of the rates authorized by subsection 3, shall deliver to the buyer a copy of the credit agreement executed by the seller.

2. Content. Every retail installment credit agreement shall contain:

A. The entire agreement of the buyer with respect to the subject matter of the credit agreement;

- B. The names of the seller and of the buyer, the place of business of the seller and the residence or place of business of the buyer as specified by the buyer;
- C. Both at the top thereof and directly above the space reserved for the signature of the buyer, the words **RETAIL INSTALLMENT CREDIT AGREEMENT** in at least 10-point bold type;
- D. A provision in at least 8-point bold type to the effect that the buyer may at any time pay his total indebtedness; and
- E. A notice in at least 8-point bold type reading as follows: **NOTICE TO THE BUYER:** 1. Do not sign this credit agreement before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this credit agreement.
3. Maximum charges. A seller may, in a retail installment credit agreement, contract for and, if so contracted for, the seller or holder thereof may charge, receive and collect the service charge authorized by this chapter. The service charge shall not exceed the following rates computed on the outstanding indebtedness from month to month:
- A. On so much of the outstanding indebtedness as does not exceed \$500,  $1\frac{1}{2}\%$  per month;
- B. If the outstanding indebtedness is more than \$500, 1% per month on the excess over \$500 of the outstanding indebtedness; or
- C. If the service charge so computed is less than 70c for any month, 70c.
- D. If the credit agreement so provides, the service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than \$5, provided that it also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.
4. Statement to buyer. The seller or holder under a retail installment credit agreement shall promptly provide the buyer under the agreement with a statement as of the end of each monthly period, which need not be a calendar month, setting forth the following:
- A. The balance due to the seller or holder from the buyer at the beginning of the monthly period;
- B. The dollar amount of each purchase, including all the items covered by any sales slip or memorandum, by the buyers during the monthly period and, unless previously furnished by the seller to the buyer, a description, the cash purchase price and the date of each item purchased;
- C. The payments made by the buyer to the seller or holder and any other credits to the buyer during the monthly period;
- D. The amount of the service charge;
- E. A legend to the effect that the buyer may at any time pay his total indebtedness.

The subparagraphs need not be stated in the sequence or order set forth above; additional subparagraphs may be included to explain the computations made in determining the amount to be paid by the buyer.

5. Service charge inclusive. The service charge shall include all charges incident to investigating and making the retail installment credit agreement and for the extension of credit thereunder. No fee, expense, delinquency, collection or other charge whatsoever shall be taken, received, reserved or contracted for by the seller under or holder of a retail installment credit agreement except as provided in this section and except that the credit agreement may provide for the payment of attorney's fees not exceeding 20% of the amount due and payable under the credit agreement if it is referred to an attorney not a salaried employee of the seller or holder for collection.

6. Insurance. If the cost of any insurance is to be separately charged to the buyer, the retail installment credit agreement shall state whether the insurance is to be procured by the buyer or the seller or holder. If the insurance is to be procured by the seller or holder, the seller or holder shall comply with section 3723, subsection 4.

7. Execution of notes. No retail installment credit agreement 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.

8. Other provisions applicable. Section 3724, subsections 4 and 5, and sections 3728 to 3734 shall be applicable to retail installment credit agreements. The words "credit service charge" in section 3724, subsections 4 and 5, shall read "service charge" for the purposes of this section.

9. Exemptions. The service charge allowed in subsection 3 shall be allowed to a seller or holder under this section only:

A. If the seller enters into an agreement subject to this chapter with any buyer on or after October 1, 1965; or

B. In the case of any buyer who had entered into an agreement with a seller prior to October 1, 1965, if the seller or holder delivers or mails to the buyer a copy of a retail installment credit agreement in conformity with this section duly executed on behalf of the seller and the seller or holder thereafter complies with this section.

Nothing in this subsection shall be construed to affect the validity or invalidity of any agreement or alleged agreement made prior to October 1, 1965.

10. Prohibited provisions. No retail installment credit agreement shall contain any provision by which:

A. In the absence of the buyer's default, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

B. A power-of-attorney is given to confess judgment in this State, or an assignment of wages is given:

C. The buyer waives any right of action against the seller or holder of the agreement, or other person acting on his behalf, for any illegal act committed in the collection of payments under the agreement;

D. The buyer executes a power-of-attorney appointing the seller or holder of the agreement, or other person acting on his behalf, as the buyer's agent in collecting payments under the agreement; or

E. The buyer relieves the seller from liability for any legal remedy which the buyer may have against the seller under the agreement or otherwise.

11. Credit agreements with financing agencies. Provided that the retail installment credit agreement complies in all other respects with this section, a financing agency may enter into a credit agreement with a retail buyer on behalf of one or more retail sellers, who need not be named in the agreement, from whom the financing agency may, with the buyer's consent, purchase or acquire indebtedness of the buyer to be paid in accordance with the agreement. Such a credit agreement shall contain the name and place of business of the financing agency in lieu of those of a retail seller. A financing agency may in such a credit agreement contract for, and if it has so contracted and delivered to the buyer a copy of the credit agreement executed by it, may charge, receive and collect the service charge authorized by this section. Each sales slip or memorandum evidencing a purchase of the buyer to be paid in accordance with such a credit agreement shall refer to the credit agreement between the buyer and the financing agency and contain the name and place of business of the retail seller.

A financing agency which purchases from more than one seller indebtedness of a retail buyer to be paid in accordance with such a retail installment credit agreement entered into by the financing agency with the buyer as provided in this subsection may charge, receive and collect the service charge authorized by subsection 3 only if the service charge so authorized is computed on the buyer's total outstanding indebtedness to the financing agency from month to month to be paid in accordance with such a retail installment credit agreement.

#### § 3736. Waiver

Any waiver by the buyer of the provisions of this chapter shall be unenforceable and void.

#### § 3737. Penalties

1. Willful violation. Any person who shall willfully violate this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500.

2. Buyer's remedies. In case of failure by any person to comply with this chapter, the buyer shall the right to recover from such person an amount equal to the credit service charge or service charge imposed and the amount of any delinquency, collection, extension, deferral or refinance charge imposed.

3. Corrections. Notwithstanding this section, any failure to comply with this chapter may be corrected within 10 days after the holder is notified thereof in

writing by the buyer and, if so corrected, neither the seller nor the holder shall be subject to any penalty under this section.

4. Exceptions. Subsection 3 shall not apply to any person who willfully violates this chapter in connection with the imposition, computation or disclosures of or relating to a credit service charge on a consolidated total of 2 or more contracts or obligations under section 3732, and the buyer may recover from such person an amount equal to the credit service charges and any delinquency, collection, extension, deferral or refinance charges imposed, contracted for or received on all contracts and obligations included in the consolidated total and the seller shall be barred from the recovery of any such charges.

Subsections 1 and 3 shall not apply to any person who violates section 3725, subsection 3.'