

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1396

S. P. 528

In Senate, March 8, 1967

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

JERROLD B. SPEERS, Secretary

Presented by Senator Good of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Relating to Installment Sales and Retail Charge Agreements.

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

Sec. 1. R. S., T. 9, Part 10, additional. Title 9 of the Revised Statutes is amended by adding a new Part 10 to read as follows:

PART 10

INSTALLMENT SALES AND RETAIL CHARGE AGREEMENTS

CHAPTER 371

INSTALLMENT SALES AND RETAIL CHARGE AGREEMENTS

§ 3801. Definitions

As used in this chapter unless the context otherwise requires:

1. Cash sale price. "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge agreement, for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements.

2. Goods. "Goods" means all tangible chattels personal. The term also means such chattels which are furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property as to become a part thereof whether or not

severable therefrom, and also means merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller. The term does not include motor vehicles as hereinafter defined, vehicle sales as included within this Title, Part 8, chapters 321 to 327, does not include any home repair sales or services included within this Title, chapter 360, and does not include things in action or intangible personal property other than merchandise certificates or coupons as hereinbefore described.

3. **Holder.** "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge agreement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred.

4. **Motor vehicle.** "Motor vehicle" means any automobile, mobile home, motorcycle, truck trailer, semitrailer, truck tractor and bus designed and used primarily to transport persons or property on a public highway, or any vehicle designed to run only on rails or tracks or in the air, but does not include any boat, trailer and any vehicle propelled or drawn exclusively by muscular power.

5. **Official fees.** "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created by a retail installment transaction.

6. **Person.** "Person" means an individual, partnership, joint venture, corporation, association or any other group, however organized.

7. **Principal balance.** "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees, less the amount of the buyer's down payment in money or goods or both.

8. **Retail charge agreement.** "Retail charge agreement" means an instrument prescribing the terms of retail installment transactions which may be made thereunder from time to time and under the terms of which a time price differential, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time.

9. **Retail buyer or buyer.** "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller.

10. **Retail installment contract.** "Retail installment contract" means an instrument, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into in this State evidencing a retail installment transaction. The term retail installment contract, may include a chattel mortgage, a security agreement, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is

bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease.

11. Retail installment transaction. "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or retail charge agreement, as defined in this section which provides for a time price differential, as defined in this section, and under which the buyer agrees to pay the unpaid balance in one or more installments.

12. Retail seller. "Retail seller" means a person regularly and principally engaged in the business of selling goods to retail buyers.

13. Services. "Services" means work, labor or services of any kind when purchased.

14. Time price differential. "Time price differential" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees.

15. Time sale price. "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance, if a separate identified charge is made therefor, and the official fees and the time price differential.

§ 3802. Retail installment contracts

1. Retail installment contracts. Each retail installment contract shall be in writing, dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in paragraph D.

A. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least 8-point type. The contract shall be designated "retail installment contract" and shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold type:

"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN."

B. The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller does so, a buyer, who has not received delivery of the goods or been furnished or rendered the services, shall have the right to rescind his contract and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

C. The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered.

D. The retail installment contract shall contain the following items:

- (1) The cash sale price of the goods or services;
- (2) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in;
- (3) The difference between subparagraphs (1) and (2);
- (4) The aggregate amount, if any, included for insurance, if a separate identified charge is made therefor, specifying the type or types of insurance and the term or terms of coverage;
- (5) The aggregate amount of official fees;
- (6) The principal balance, which is the sum of subparagraphs (1), (4) and (5);
- (7) The amount or rate of the time price differential as limited by paragraph H of this section;
- (8) The amount of the time balance owed by the buyer to the seller, which is the sum of subparagraphs (6) and (7) and the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance.

E. A retail installment contract shall not be signed by any party thereto when it contains blank spaces of items which are essential provisions of the transaction; provided, however, if delivery of the goods is not made at the time of the execution of the contract only, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of the contract shall be presumptive proof or, in the case of a holder of the contract without knowledge to the contrary when he purchases it, conclusive proof of such delivery and of compliance with this subsection in any action or proceeding.

F. Notwithstanding the provisions of any other law, a retail installment contract payable in substantially equal successive monthly installments beginning one month from the date of the contract may provide for, and the seller or holder may then charge, collect and receive a time price differential which shall not exceed an amount determined in accordance with the following schedule:

- (1) On so much of the principal balance as does not exceed \$500, \$10 per \$100 per year.

(2) On so much of the principal balance as exceeds \$500, \$8 per \$100 per year on that portion over \$500.

(3) Such time price differential shall be computed on the principal balance of the retail installment contract from the date of the contract until the due date of the final installment, notwithstanding that the balance thereof is payable in installments.

(4) If the retail installment contract is payable in successive monthly installments substantially equal in amount beginning one month from the date of the contract for a period less or greater than a year, or for amounts less or greater than \$100, the amount of the maximum time price differential set forth in the foregoing schedule shall be decreased or increased proportionately. A fractional monthly period of 15 days or more may be considered a full month.

(5) If a retail installment contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular unequal or larger installment or installments, or if the first installment is not payable one month from the date of the contract, the time price differential may not exceed an account which, having due regard for the schedule of installment payments will provide the same yield as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

(6) A time price differential of \$10 may be charged, collected and received on any retail installment contract or contracts less than \$100.

G. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, shall receive a refund credit thereon for such prepayment. The amount of such refund shall represent at least as great a proportion of the original time price differential, as the sum of the monthly unpaid balances under the schedule of payments in the contract beginning as of the date after such prepayment which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment is prior to the due date of the first installment under the contract, then as of the date after such prepayment which is the next succeeding monthly anniversary date of the date of the contract, bears to paragraph J the sum of all the monthly unpaid balances under the schedule of installment payments in the contract.

H. The holder of any retail installment contract, if it so provides, may collect a delinquency and collection charge on each installment in default for a period of more than 10 days in the amount not to exceed 5% of each installment of \$5, whichever is less, or, in lieu thereof, interest after maturity on each such installment not to exceed the highest lawful contract rate. In addition, such contracts may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried

employee of the holder of the contract, and for court costs and disbursements.

I. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer shall be given a written receipt for any payment when made in cash. Such a statement or receipt shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of \$1 for each additional statement or receipt so supplied.

J. Retail installment contract consolidation.

(1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. Each subsequent purchase shall be a separate retail installment contract under this chapter, notwithstanding that the same may be included in and consolidated with one or more of such previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchase except as hereinafter stated in this subsection.

(2) In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each subsequent purchase, in which case the provisions of subsection 1, paragraphs A, B and D of this section shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum or otherwise, such memorandum shall set forth with respect to each subsequent purchase the following:

- a. The cash sale price of the goods or services;
- b. The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in;
- c. The difference between divisions a and b;
- d. The aggregate amount, if any, included for insurance, if a separate identified charge is made therefor, specifying the type or types of insurance and the term or terms of coverage;
- e. The aggregate amount of official fees;
- f. The principal balance, which is the sum of divisions c, d and e;
- g. The amount of the time price differential as limited by paragraph H of this section;

- h. The amount of the time balance owed by the buyer to the seller, which is the sum of divisions f and g;
- i. The outstanding balance of the previous contract or contracts;
- j. The consolidated time balance, which is the sum of divisions h and j;
- k. The revised installments applicable to the consolidated time balance, if any.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(3) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation, the entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases; and each payment after such subsequent purchase made on the consolidated contract shall be deemed to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with such subsequent purchases, at the seller's option, the subsequent payments may be deemed to be allocated as follows: An amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. However, the amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase. The provisions of this subparagraph shall not apply to cases where such previous and subsequent purchase involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

§ 3803. Retail charge agreements

1. Retail charge agreements. Each retail charge agreement shall be in writing, and signed by the buyer. A copy of any such agreement executed on or after the effective date of this chapter shall be delivered or mailed to the buyer prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the agreement contained in the body thereof shall be in a size equal to at least 10-point bold type and shall appear directly above the buyer's signature. No agreement executed on or after the effective date of this chapter shall be signed by the buyer when it contains blank spaces to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this subsection, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of such delivery and that the agreement, when signed, did not contain any blank spaces as herein provided. All retail charge agreements executed on or after the effective date of this chapter shall state the maximum amount or rate of the time price differential to be charged and paid pursuant thereto. Any such agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold type:

“NOTICE TO THE BUYER — DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN.”

A. The buyer under the retail charge agreement shall promptly be supplied with a statement as of the end of each monthly period, which need not be a calendar month, or other regular period agreed upon in writing, at the end of which there is any unpaid balance thereunder, which statement shall recite the following:

- (1) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;
- (2) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;
- (3) The payments made by the buyer and any other credits to the buyer during the period;
- (4) The amount, if any, of any time price differential for such period; and
- (5) A legend to the effect that the buyer may at any time pay his total unpaid balance or agreed upon increment.

B. A retail charge agreement may provide for, and the seller or holder may then, notwithstanding the provisions of any other law, charge, collect and receive, a time price differential for the privilege of paying in installments thereunder, which shall not exceed a credit charge of \$1.50 per month, on so much of the unpaid balance as does not exceed the sum of \$500 and a credit charge of no more than \$1 per month on that portion of the unpaid balance which exceeds the sum of \$500. The credit charge as to any sale shall not be assessed sooner than one month from the date of such sale, computed on all amounts unpaid thereunder from month to month, which need not be a calendar month, or other regular period. In addition, a retail charge agreement may provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried employee of the holder of the retail charge agreement or any unpaid balance thereunder, and for court costs and disbursements.

C. A charge not to exceed 70c for any amount charged amounting to 70c or less.

§ 3304. Sale without personal solicitation

In any sale made without personal solicitation by a salesman if all the terms of sale, cash price, time price differential and any other charges are set forth in a catalogue or in any other printed or oral solicitation generally available to the public, the seller may satisfy the requirements of this chapter by delivering a memorandum to the buyer signed by the seller containing all the essential

elements of the agreement before the date for payment of the first installment of the sale.

§ 3805. Assignment notice

1. Assignment notice. Notwithstanding the provisions of any other law:

A. An assignee may purchase or acquire or agree to purchase or acquire any retail installment contract or retail charge agreement or any outstanding balance under either from a seller on such terms and conditions and for such price as may be mutually agreed upon;

B. Unless the buyer has notice of the assignment of his retail installment contract, retail charge agreement or any outstanding balance under either, payment therefor made by the buyer to the holder last known to him shall be binding upon all subsequent holders.

§ 3806. Prohibition of waiver

No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchase thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law.

§ 3807. Remedies and penalties

1. Remedies and penalties.

Any person who shall willfully violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$500 or by imprisonment for not more than 6 months, or by both.

A. Any person who violates any provision of this chapter except as a result of an accidental or bonafide error shall be barred from the recovery of any time price differential, or any delinquency or collection charge under or in connection with the related retail installment contract or retail charge agreement; but the holder may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to the seller or holder of any insurance included in the transaction.

B. Notwithstanding the provisions of this section, any failure, other than a willful failure, to comply with any provision of 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 is subject to any penalty under this section.

§ 3808. Rules and regulations

The Bank Commissioner is authorized and empowered to make such general rules and regulations and such specific rulings, demands and findings as may be necessary for the proper operation and enforcement of this chapter.

§ 3809. Retail Installment Contract and Charge Advisory Board

There is established a Retail Installment Contract and Credit Advisory Board in the Department of Banks and Banking. The board shall consist of the commissioner, who shall be chairman of the board, and 4 other members appointed by the Governor. Of the 4 appointed members, 2 shall each have had practical experience in the dispensing of credit and the other 2 shall each have had practical experience in the retailing industry. Each appointed member shall serve for a term of 3 years and until his successor is appointed and qualified.

The members of the board shall serve without compensation but shall be reimbursed for their actual and necessary expenses in attending meetings of the board.

§ 3810. Powers and duties; advisory board

1. Advisory board; powers and duties. The board shall have the following powers and duties:

A. Advise and consult with the commissioner concerning operation of the statute within the Maine retailing industry for the administration of this law, and assist in the drafting and promulgation of the rules and regulations adopted to implement this law;

B. Advise and inform the public whenever necessary concerning operation of this law and its purposes.

§ 3811. Appeal

Any person aggrieved and directly affected by any order of the commissioner in pursuance of this chapter may appeal to the Administrative Hearing Commissioner within 30 days after issuance of the order. The validity of such order may be tested only by such an appeal and the statute may not be placed in issue in an action to enforce it or in the prosecution for its violation. Filing of an appeal shall not stay enforcement of an order, but the court may order such a stay on any terms it deems proper.

Sec. 2. Effective date. The provisions of this Act shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date thereof. This Act shall become effective January 1, 1968.

Sec. 3. Appropriation. There is appropriated from the General Fund to the Department of Banks and Banking the sum of \$15,000 for the fiscal year ending June 30, 1968 and the sum of \$15,000 for the fiscal year ending June 30, 1969 to carry out the purposes of this Act. The breakdown shall be as follows:

BANKS AND BANKING, DEPARTMENT OF	1967-68	1968-69
Personal Services	(2) \$12,000	(2) \$12,000
All Other	2,000	3,000
Capital Expenditures	1,000	—
	<hr/>	<hr/>
	\$15,000	\$15,000