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Protection for the Automobile Installment Buyer

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abiding citizen and that he was denied his life, his liberty, through restraint, or denied the right to the use and enjoyment of all his faculties; his right to pursue happiness, providing that the exercise of that right did not interfere with the equal rights of others; or that he was denied an article actually needed according to his financial and social status; all of these deprivations resulting because of his race, his color, his creed, or his national origin. The court would seemingly have a difficult task determining the issue because of the broad and general terms used in the statute.

It seems evident that the 1957 Wyoming Civil Rights Act is a piece of compromise legislation, demonstrated by its arduous legislative history and the lack of specificity in the final enactment. Removing from consideration the definite possibility that the statute may be "void for vagueness,"⁴² the most that can be said is that the language of the statute is so broad and general, and will require so much in the way of judicial interpretation, that it will not prove to be an effective instrument for the attainment and preservation of "civil rights."

BETTY OELAND

PROTECTION FOR THE AUTOMOBILE INSTALLMENT BUYER

In the United States in 1956 the new passenger car registrations totaled 5,955,248. In Wyoming during the same period new car registration totaled 26,506.¹ Used car purchases in the United States amounted to 8,900,000 during 1956.² Of all the new and used automobiles purchased in 1956, 36% of the purchases were made for cash, 62% were financed by installment credit or other borrowing, and 2% were financed by methods that were not ascertained.³ It can easily be seen from these figures that installment sales in the automobile field are of primary importance.

The significant rise in installment financing has led nine states and the territory of Hawaii to enact legislation controlling the entire field of installment credit.⁴ Thirteen states have passed legislation controlling the installment financing of automobiles.⁵ A declaration by one investigating

42. 2 Sutherland, *Statutory Construction* § 4920 (3d ed. 1943).

1. *Automobile Facts and Figures*, Automobile Manufacturers Association, 17 (37th ed. 1957).
2. *Id.* at 31.
3. *Ibid.* It is interesting to note that the amount of installment credit has increased 10% since 1950.
4. Conn. Gen. Stat. c. 311, § 2163c to 68c (Supp. 1953); Idaho Laws, c. 153 (1957); Ind. Stat. Ann. § 58-901 to 58-934 (1951); Md. Ann. Code Art. 83, § 116 to 152 (1951); Mass. Laws Ann. c. 255, § 11 to 13h (1956); N.J. Rev. Stat. § 17:16B-1 to 12 (Supp. 1950); N.D. Laws c. 322 (1957); Ohio Rev. Code § 1317.01 to .99 (1953); Utah Code Ann. § 15-1-2a (Supp. 1957); Hawaii Laws Art. 98, § 1 to 30 (1941).
5. Cal. Civil Code § 2981 to 82 (1949); Colo. Rev. Stat. § 13-16-1 to 10 (1953); Iowa Acts c. 322 (1957); Ky. Rev. Stat. § 190-010 to 190-990 (1956); Me. Rev. Stat. c. 60, § 305 to 6 (1954); Mich. Laws c. 266 (1957); Nev. Stat. c. 346 (1953); N.Y. Sess. Law c. 633 (1956); Ore. Rev. Stat. § 727.010 to 727.990 (1953); Pa. Stat. Ann. Tit. 69, § 601 to 37 (Supp. 1951); Va. Code § 46-502 to 504 (1950); Wis. Stat. § 218.01 to 105 (1951).

committee on automobile financing states as their reason for urging the passing of legislation, "nefarious, unscrupulous and improper practices in the financing of the sale of motor vehicles . . . not only among sellers, but also. . . sales finance companies and some banks."⁶

Unscrupulous persons can take advantage of the average consumer in installment sales financing in various ways. Perhaps the greatest abuse is in the field of the "carrying" or "finance" charge. Attempts to bring this within the usury statutes have failed in most instances.⁷ In *Conway v. Skidmore*,⁸ the Wyoming court held that a carrying charge added to the cash price was not interest but merely a part of the sale agreement and was not controlled by the usury statute.

The installment sales contract itself gives the unscrupulous seller another method to take advantage of the average buyer. The eager buyer often does not take time to read the fine print in the contract. Most dealers will not take the time to explain the various provisions to the buyer. An uninformed buyer does not realize, for example, that by signing his name to the contract he may have waived his defense of breach of warranty against a finance company's demands for payment, but a waiver of this type is usually held unenforceable as being contrary to public policy.⁹ The installment sales contract may often contain a provision making the full balance of the contract due if the holder should feel the loan insecure. Courts usually hold however, that the finance company or bank must have reasonable grounds for feeling the loan is insecure.¹⁰

Many conditional sales contracts have a provision giving the holder the right to repossess the automobile without legal process if the buyer is late with a payment. This provision is generally upheld by the courts.¹¹ A provision of this type would work a grave injustice on the buyer who may have forgotten the date and missed a payment. Such a "self help" provision is often combined with a clause giving the finance company or reposessor the right to sell the automobile any time thereafter, at either a private or public sale.¹² In most cases the amount obtained from the sale is inadequate. The chances of obtaining an inadequate sum would seem greatest in the case of a private sale.

Since in an installment sale title remains with the seller until the full purchase price is paid,¹³ the seller is held to have an insurable interest.¹⁴ Installment sales contracts usually provide for such insurance as the dealer

6. Pa. Stat. Ann. Tit. 69, § 603 (Supp. 1952).

7. *Cady L. Daniels v. Fenton*, 97 Colo. 409, 50 P.2d 62 (1953); *Underwriters Acceptance Corp. v. Dunkin*, 41 N.W.2d 855, 152 Neb. 550 (1950).

8. 48 Wyo. 73, 41 P.2d 1049 (1935).

9. 3 Jones, *Chattel Mortgages and Conditional Sales* § 1257 (6th ed. 1933).

10. Good faith required; *Rochan v. Pacific Coast Mort. Co.*, 111 Cal.App. 298, 295 Pac. 364 (1931); *Commercial Credit Co. v. Cain*, 190 Miss. 866, 1 So.2d 776 (1941). Good cause must be shown; *Park v. Phillips*, 71 Nev. 313, 289 P.2d 1053 (1955).

11. *Supra* note 9, § 1338.

12. *Hampton v. Commercial Credit Corp.*, 119 Mont. 476, 176 P.2d 270 (1946).

13. *Brooks v. Superior Oil Co.*, 96 F.Supp. 641 (D.Ark., 1951).

14. *Pratt v. Hanover Fire Ins. Co.*, 50 R.I. 203, 146 Atl. 763 (1929).

may specify. This insurance may be purchased by either the seller or the buyer, but the final terms of the insurance contract as to the amount, type and term of coverage are usually specified by the dealer as determined by the finance company.¹⁵ Judgment as to the type and cost of insurance left with the seller is not a healthy situation especially when the dealer may get a "rebate" from the insurance sold.

The need for regulations of these possible abuses results from several socio-economic considerations. First, due to an increase in the production of goods with a trade-in value, automobiles, household appliances and other desirable consumer items, retail installment buying has become increasingly popular over the past ten years.¹⁶ This increase in popularity combined with better advertising media, keener business competition and the easy money situation of the past few years has caused the consumer to buy many things that he could not afford ten to fifteen years ago. Second, a vast majority of the installment buyers are from the lower income brackets and cannot stand the expense of a law suit. In 1955, 60% of the new cars bought in the United States were bought by consumers with incomes of less than \$6,000 per year.¹⁷ Such buyers are not as likely to learn or take advantage of their legal rights as, for example, a large corporation buying new machinery by means of a conditional sale device.¹⁸

The statutes regulating installment sales of automobiles can generally be classified into two groups: those that regulate the provisions of the installment sale contract only, and those that in addition to specifying the provisions to be contained in the contract require the automobile dealers and the finance companies to be licensed with a state commissioner.

California's Motor Vehicle Installment Sales Act is an example of regulation of contract legislation.¹⁹ The California law provides that the contract shall state in the following order: (1) cash price, (2) amount of buyer's down payment, (3) difference between the two amounts, (4) cost to the buyer of any insurance, (5) a description of any amounts paid by the seller to a public official in connection with the contract, (6) unpaid balance, (7) time differential or finance charge,²⁰ (8) contract balance, (9) number of installments required to pay off the contract, (10) names and addresses of persons to whom notice must be sent before the repossessed automobile

15. *Kleiber Motor Truck Co. v. International Indemnity Co.*, 106 Cal.App. 709, 278 Pac. 865 (1930).

16. *Automobile Facts and Figures*, 37th Ed., Automobile Manufacturers Association (1957) 31.

17. *Id.* at 36.

18. Note, 49 Harv. L. Rev. 128 (1935).

19. Cal. Civil Code 2981 and 2982 (1949), as amended (Supp. 1955).

20. *Ibid.* 2982 (Supp. 1955). California's time differential or finance charge is computed by multiplying an amount not in excess of 1% of the unpaid balance by the number of months the contract covers. Iowa has a more elaborate provision for figuring the finance charge. In Iowa the automobiles are divided into 4 classifications: new, models not more than 2 years old, models not more than 4 years old and all those over 4 years. Class I, the maximum charge is 1¼%, class II, 1¾%, class III, 2¼%, and class IV, 2¼% plus \$1.00 per month not to exceed \$12. Iowa Acts c. 163, § 9 (1957).

may be sold. Since this legislation was enacted with the obvious purpose of protecting purchasers of motor vehicles against excessive charges by requiring full disclosure of all items of cost, the Supreme Court of California has held that strict compliance with this statute is mandatory. If the conditional sales contract omits one of the above requisites the contract will be unenforceable.²¹ An excessive finance charge in the contract will render the contract not only unenforceable, but the buyer may recover from the seller the total amount paid on the contract.²²

Colorado in 1953 enacted a licensing type statute. It requires that the same provisions enumerated in the California Code²³ be included in the contract. But in addition, Colorado requires the licensing of finance companies with the state bank commissioner.²⁴ The finance companies are required to keep on file at all times with the commissioner a copy of the maximum rate charts used to figure the finance charge. If the buyer suspects violation of the sales licensing act, the commissioner may be notified and an examination is made of the alleged violator. The commissioner will then hold a hearing on the alleged violation. If the finance company is found guilty its license may be suspended or revoked. Grounds for suspension or revocation include: defrauding the retail buyer, failure to perform a written contract with a buyer, as well as failure to comply with the retail motor vehicle installment sales act. A willful violation of the contract requirements by any person will bar a recovery of the finance charge by the holder of the installment contract.²⁵

Typical retail installment sales legislation will include the following requirements: (1) the printed portion of the contract shall be in at least eight point type. Above the buyer's signature in at least ten point type there must be a notice cautioning the buyer not to sign the contract if there are any blank spaces to be filled, and reminding the buyer that he is entitled to an exact copy of the contract;²⁶ (2) no installment contract shall require the execution of any note by the buyer which, when separately negotiated, will cut off actions or defenses against third parties, i.e., there shall be no holder in due course of a promissory note executed with the contract;²⁷ (3) unless the buyer had notice of an assignment of the contract, payment to the last known holder shall be binding on subsequent holders or assignees.²⁸

The following provisions are prohibited in most installment sale legislation: (1) acceleration clauses, (2) provisions for confession of judgment or power of attorney or wage assignments, (3) provisions allowing the seller or holder of the contract to break the peace or enter the

21. *Carter v. Seaboard Finance Co.*, 33 Cal.2d 564, 203 P.2d 758 (1949).

22. Cal. Civil Code 2982 (e) (1949).

23. Colo. Rev. Stat. 13-16-6 (1953).

24. *Ibid* 13-16-2.

25. *Id.* 13-16-9.

26. Iowa Acts c. 322, § 3 (1957).

27. Pa. Stat. Ann. Tit. 69, § 615(G) (Supp. 1951).

28. Ky. Rev. Stat. Ann. 190.100 (e) (Supp. 1958).

buyer's premises for repossession, (4) provisions relieving the holder or assignee from any defense or remedy that is good against the seller.²⁹

Wyoming has left the control of the installment sales contract up to the good faith and integrity of the automobile dealer and finance company. Wyoming provides by statute for the filing and recording of the contract with the county clerk. An affidavit is required to be attached to the contract specifying the names of the vendor and vendee, a description of the property and the interest of the vendors in the property.³⁰ The purpose of this provision is to preserve the interest of the vendor as against judgment creditors of the vendee, or purchasers without notice from the vendee.

If installment sales were made subject to Wyoming's Small Loan Act,³¹ allowing a maximum interest of 8% on loans under \$1,000 and a maximum of 10% on loans over \$1,000, conditional sales would no longer be a profitable form of business for the finance companies. In determining that the finance charge on an installment sales contract is not covered by the small loan statutes, courts have recognized the necessary expenses of the finance companies. Return on investment, overhead cost, handling charges, insurance, and general security risks are factors that must be taken into consideration in figuring additions to cash price.³²

The states that have enacted statutes regulating the installment sales of motor vehicles have made installment sales advantageous to all parties concerned, the dealer, the finance company and particularly the buyer. Because the statutes are so explicit the dealer will benefit from knowing exactly what is expected of him. The finance company benefits because, the statutes that set out a maximum finance charge offer a fair return for the risks taken by the companies. In taking affirmative steps toward the control of the finance charges these states have insured that the installment sales contract will not be subject to the usury statutes. By requiring a clear-cut statement of the total cash price and the time sales price the buyer will be in a much better position to make a choice between automobiles of a similar quality and price. The buyer is also in a better position to determine the relative advantages of using savings to pay the cash price or borrowing cash from a cheaper source than that offered by the dealer.³³

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29. Pa. Stat. Ann. Tit. 69, § 615 is an example of a statute containing all four of these provisions.

30. Wyo. Comp. Stat. § 41-801 (1945).

31. Id. 39-1113.

32. Commercial Credit Co. v. Tarwater, 215 Ala. 123, 110 So. 39 (1926); Seebold v. Eustermann, 216 Minn. 566, 13 N.W.2d 739 (1944).

33. 19 Rocky Mt. L. Rev. 135 (1946).