

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1299

Session of
1989

INTRODUCED BY O'DONNELL, MANDERINO, RYAN, HAYES AND F. TAYLOR,
APRIL 25, 1989

AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 2, 1989

AN ACT

1 Amending the act of October 28, 1966 (1st Sp.Sess., P.L.55,
2 No.7), entitled "An act defining, regulating and relating to
3 retail installment contracts for all goods and services
4 except certain motor vehicles and home improvements;
5 prescribing the requirements of such contracts and
6 limitations on the enforcement thereof; and providing
7 remedies and penalties," further providing for rates, service
8 charges, fees and contracts; requiring plain language;
9 PROVIDING FOR RETROACTIVE APPLICATION; and making repeals. <—

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 201(6) of the act of October 28, 1966
13 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services
14 Installment Sales Act, amended February 26, 1988 (P.L.78,
15 No.15), is reenacted to read:

16 Section 201. Unless the context or subject matter otherwise
17 requires, the definitions given in this article govern the
18 construction of this act.

19 * * *

20 (6) "Retail installment contract" or "contract" means any
21 contract for a retail installment sale between a buyer and a

1 seller which provides for repayment in installments, whether or
2 not such contract contains a title retention provision, and in
3 which a time price differential is computed upon and added to
4 the unpaid balance at the time of sale or where no time price
5 differential is added but the goods or services are available at
6 a lesser price if paid by cash or where the buyer, if he had
7 paid cash, would have received any additional goods or services
8 or any higher quality goods or services at no added cost over
9 the total amount he pays in installments. When taken or given in
10 connection with a retail installment sale, the term includes but
11 is not limited to a security agreement and a contract for the
12 bailment or leasing of goods by which the bailee or lessee
13 contracts to pay as compensation for their use a sum
14 substantially equivalent to or in excess of their value and by
15 which it is agreed that the bailee or lessee is bound to become,
16 or has the option of becoming, the owner of the goods upon full
17 compliance with the terms of the contract. The term also
18 includes any contract, obligation or agreement in the form of
19 bailment or lease if the bailee or lessee has the option to
20 renew the contract by making the payments specified in the
21 contract, the contract obligates the bailor or lessor to
22 transfer ownership of the property to the bailee or lessee upon
23 full compliance by the bailee or lessee with his obligations
24 under the contract, including any obligation incurred with
25 respect to the exercise of an option by the bailee or lessee to
26 renew the contract, and the payments contracted for by bailee or
27 lessee, including those payments pursuant to the exercise of an
28 option by the bailee or lessee to renew the contract, are
29 substantially equivalent to or in excess of the aggregate value
30 of the property and services involved. With respect to a sale

1 described in the previous sentence, the disclosures required
2 under this title shall be calculated on the assumption that the
3 bailee or lessee will exercise all of his options to renew the
4 contract, make all payments specified in the contract, and
5 become the owner of the property involved.

6 * * *

7 Section 2. Section 501(a) and (b) of the act, reenacted
8 February 26, 1988 (P.L.78, No.15), are reenacted to read:

9 Section 501. (a) A seller may, in a retail installment
10 contract, contract for and, if so contracted for, the holder
11 thereof may charge, receive and collect a service charge
12 measured for a period between the date of such contract and the
13 due date of the last installment and calculated for that period
14 according to the actuarial method of computation or by
15 application of the United States rule at a rate which does not
16 exceed the equivalent of eighteen percent (18%) simple interest
17 per annum.

18 (b) Notwithstanding the rates provided for in this section,
19 no issuer of a credit card primarily engaged as a seller or
20 distributor of gasoline shall be permitted to charge, receive or
21 collect a service charge in excess of fifteen percent (15%)
22 simple interest per annum on unpaid balances.

23 * * *

24 Section 3. Sections 901, 902 and 903 of the act, amended
25 February 26, 1988 (P.L.78, No.15), are reenacted to read:

26 Section 901. A retail installment account may be established
27 by the seller upon the request of a buyer or prospective buyer.
28 A statement setting forth the rates of service charge, which
29 shall not exceed those authorized by this article, and
30 describing the balance on which such service charge will be

1 computed, shall be printed in type no smaller than eight point
2 in every application form used by the seller and shall be stated
3 to the applicant when such installment accounts are negotiated
4 by telephone.

5 Subject to the other provisions of this article, a retail
6 installment account may be established by a financing agency on
7 behalf of one or more sellers from whom the financing agency
8 may, with the buyer's consent purchase or acquire indebtedness
9 of the buyer to be paid in accordance with the agreement.

10 Section 902. At the time a seller accepts the credit of the
11 buyer and establishes a retail installment account for his use,
12 the seller shall confirm this fact to the buyer in writing. Such
13 confirmation shall contain the same disclosures as required by
14 section 901. This confirmation shall also contain a legend that
15 the buyer may at any time pay his entire balance.

16 (a) The confirmation shall be in type no smaller than elite
17 typewriter characters.

18 (b) If no copy of the confirmation is retained by the
19 seller, a notation in his permanent record showing that such
20 confirmation was mailed, and the date of the mailing, shall
21 serve as prima facie evidence of such mailing.

22 (c) Every confirmation given to a buyer after October 1,
23 1988, must be:

24 (1) Written in a clear and coherent manner using words with
25 common and everyday meanings.

26 (2) Appropriately divided and captioned by its various
27 sections.

28 (d) Any financing agency or retail seller who fails to
29 comply with subsection (c) shall be liable to a consumer who is
30 a party to a retail installment account governed by this act in

1 an amount equal to any actual damages sustained plus a penalty
2 of fifty dollars (\$50). The total class action penalty against
3 any such financing agency or retail seller shall not exceed ten
4 thousand dollars (\$10,000) in any class action or series of
5 class actions arising out of the use by a financing agency or
6 retail seller of a form of confirmation which fails to comply
7 with subsection (c). No action under this subsection may be
8 brought after both parties to the retail installment account
9 have fully performed their obligation under such account, nor
10 shall any financing agency or retail seller who attempts in good
11 faith to comply with subsection (c) be liable for such
12 penalties. Subsection (c) shall not prohibit the use of words or
13 phrases or forms of agreement required by State or Federal law,
14 rule or regulation or by a governmental instrumentality. A
15 violation of the provisions of subsection (c) shall not render
16 any retail installment account void or voidable nor shall it
17 constitute:

18 (1) a defense to any action or proceeding to enforce the
19 terms of such account; or

20 (2) a defense to any action or proceeding for breach of
21 contract.

22 Section 903. Each retail seller, before he can avail himself
23 of the service charges permitted by this article, shall display
24 prominently in his main place of business and in each branch
25 thereof, a statement outlining the service charge rates which
26 will conform to this article.

27 Section 4. Section 904(a) of the act, reenacted February 26,
28 1988 (P.L.78, No.15), is reenacted to read:

29 Section 904. Subject to the other provisions of this article
30 the seller or holder of a retail installment account may charge,

1 receive and collect the service charge authorized by this act.
2 The service charge shall not exceed the following rates computed
3 on the outstanding balances from month to month:

4 (a) On the outstanding balance, one and one-half percent (1
5 1/2%) per month.

6 * * *

7 Section 5. Section 904.1 of the act is repealed.

8 Section 6. Section 904.2 of the act, added February 26, 1988
9 (P.L.78, No.15), is reenacted and amended to read:

10 Section 904.2. (a) Notwithstanding any other provision of
11 this act, there shall be no limitation on the rate of the
12 service charge imposed in connection with retail installment
13 accounts issued to buyers domiciled outside Pennsylvania by a
14 seller or holder of a retail installment account who is
15 otherwise subject to this section: Provided further, That the
16 rate of such service charge shall be set forth in writing and
17 delivered to the buyer. In determining whether a buyer is
18 domiciled in Pennsylvania, a seller or holder of a retail
19 installment account may conclusively assume that such buyer is
20 domiciled outside Pennsylvania if the seller or holder has not
21 mailed any solicitation to the buyer at a Pennsylvania
22 residential address, has not entered into a retail installment
23 account with the buyer pursuant to a personal meeting at an
24 office of the seller or holder in Pennsylvania and does not mail
25 the buyer monthly billing statements to a Pennsylvania
26 residential address.

27 (b) The Secretary of Banking shall report annually to the
28 General Assembly on the impact of subsection (a) upon the
29 availability of retail installment accounts in Pennsylvania.

30 (c) This section shall expire three (3) years from [the

1 effective date of this section unless specifically reenacted
2 within three (3) years of the effective date of this section]
3 February 26, 1988, unless extended by statute.

4 Section 7. Section 904.3 of the act, added February 26, 1988
5 (P.L.78, No.15), is reenacted to read:

6 Section 904.3. The rates permitted under sections 501(a) and
7 904(a) shall automatically revert to the rates in effect on
8 March 24, 1982, unless specifically reenacted [within three (3) <—
9 years of the effective date of this section] ON OR BEFORE <—
10 FEBRUARY 26, 1991.

11 Section 8. The provisions of this act are severable. If any
12 provision of this act or its application to any person or
13 circumstance is held invalid, the invalidity shall not affect
14 other provisions or applications of this act which can be given
15 effect without the invalid provision or application.

16 Section 9. Section 12 of the act of March 25, 1982 (P.L.199,
17 No.68), entitled "An act amending the act of October 28, 1966
18 (1st Sp.Sess., P.L.55, No.7), entitled 'An act defining,
19 regulating and relating to retail installment contracts for all
20 goods and services except certain motor vehicles and home
21 improvements; prescribing the requirements of such contracts and
22 limitations on the enforcement thereof; and providing remedies
23 and penalties,' further providing for applicability of the act,
24 for the contents of contracts, for a certain notice of claims or
25 defense, for judgments, for service charges and certain fees and
26 eliminating the duty of the Department of Banking to supply rate
27 charts to retail sellers and finance agencies," is repealed.

28 Section 10. This act shall be retroactive to February 26,
29 1988 and shall apply to any action or proceeding pending, in any
30 court of this Commonwealth, in any court of any other State, or

1 in any Federal court, as of the effective date of this act.

2 Section 11. This act shall take effect immediately.