

No. 1982-68

AN ACT

SB 306

Amending the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), entitled "An act defining, regulating and relating to retail installment contracts for all goods and services except certain motor vehicles and home improvements; prescribing the requirements of such contracts and limitations on the enforcement thereof; and providing remedies and penalties," further providing for applicability of the act, for the contents of contracts, for a certain notice of claims or defenses, for judgments, for service charges and certain fees and eliminating the duty of the Department of Banking to supply rate charts to retail sellers and finance agencies.

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

Section 1. The act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the "Goods and Services Installment Sales Act," is amended by adding a section to read:

Section 104. Application.—*Notwithstanding any other act, this act shall exclusively govern and regulate the terms and conditions of all extensions of credit by the means of credit cards or credit card operations for the purchase of goods and services within this Commonwealth but excluding cash advances.*

Section 2. Clause (6) of section 201 of the act is amended and clauses are added to read:

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

* * *

(6) "Retail installment contract" or "contract" means any contract for a retail installment sale between a buyer and a seller which provides for repayment in installments, whether or not such contract contains a title retention provision, and in which a time price differential is computed upon and added to the unpaid balance at the time of sale or where no time price differential is added but the goods or services are available at a lesser price if paid by cash or where the buyer, if he had paid cash, would have received any additional goods or services or any higher quality goods or services at no added cost over the total amount he pays in installments. When taken or given in connection with a retail installment sale, the term includes but is not limited to a security agreement 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 also includes any contract, obligation or agreement in the form*

of bailment or lease if the bailee or lessee has the option to renew the contract by making the payments specified in the contract, the contract obligates the bailor or lessor to transfer ownership of the property to the bailee or lessee for no other or a nominal consideration upon full compliance by the bailee or lessee with his obligations under the contract, including any obligation incurred with respect to the exercise of an option by the bailee or lessee to renew the contract, and the payments contracted for by bailee or lessee, including those payments pursuant to the exercise of an option by the bailee or lessee to renew the contract, are substantially equivalent to or in excess of the aggregate value of the property and services involved. With respect to a sale described in the previous sentence, the disclosures required under this title shall be calculated on the assumption that the bailee or lessee will exercise all of his options to renew the contract, make all payments specified in the contract, and become the owner of the property involved.

* * *

(17) *“Purchase money loan” means a cash advance which is received by a customer in return for a service charge, time-price differential, finance charge or interest which is applied, in whole or substantial part, to a purchase of goods or services from a seller who is affiliated with the creditor by common control or business arrangement.*

(18) *“Purchase money lender” means any creditor or financing agency who makes or extends purchase money loans.*

Section 3. Section 303 of the act is amended to read:

Section 303. Except as provided in Article VIII of this act, a contract shall contain the following:

(a) 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 a description of the goods or services sufficient to identify them. Services or multiple items of goods may be described in general terms and may be described in detail sufficient to identify them in a separate writing.

(b) The cash sale price of the goods, services and accessories which are the subject matter of the retail installment sale.

(c) 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.

(d) The difference between item (b) and item (c).

(e) The amount, if any, included for insurance, specifying the coverages and the cost of each type of coverage.

(f) The amount, if any, of official fees.

(g) The unpaid balance, which is the sum of items (d), (e) and (f).

(h) The amount of the service charge, if any. **and the following statement in at least ten-point bold type: “The service charge herein contained does not exceed the equivalent of fifteen percent (15%) simple interest per annum on the unpaid balance, except that a minimum service charge of seventy cents (70¢) per month may be made.”]**

(i) The time balance, which is the sum of items (g), and (h), 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.

(j) The time sale price.

(k) *The following provision in at least ten-point, boldface type:*

NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amount paid by the debtor hereunder.

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

Section 4. The introductory paragraph of section 401 of the act is amended and clauses are added to read:

Section 401. No contract, [or] obligation *or agreement* shall contain any provision by which:

* * *

(j) *The seller or holder of the contract or any person acting on his behalf is given authority to execute upon a judgment by confession.*

(k) *The seller or holder of the contract or any person acting on his behalf is given authority to take a mortgage or other security against residential real estate of the buyer or any other obligee to the contract.*

Section 5. Sections 402, 501 and 603 of the act are amended to read:

Section 402. No right of action or defense arising out of a retail installment sale which the buyer has against the seller, other than as provided in section 1202, and which would be cut off by assignment, shall be cut off by assignment of the contract to any third party whether or not he acquires the contract in good faith and for value. **[unless the assignee gives notice of the assignment to the buyer as provided in this section, and within forty-five (45) days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A notice of assignment shall be in writing addressed to the buyer at the address shown on the contract and shall: identify the contract; state the name of the seller and buyer; describe the goods or services; state the time balance and the number and amounts of the installments. The notice of assignment shall contain the following warning to the buyer:**

“You have forty-five (45) days within which to notify us of any claims or defenses which you may have against the seller. If you have any complaints or objections to make, you should notify us at this time.”]

No purchase money lender shall take or receive any instrument which evidences or embodies a debt arising from a purchase money loan nor shall any seller accept as full or partial payment for such sale the proceeds of any purchase money loan, unless any instrument which evi-

dences or embodies a debt made in connection with such purchase money loan contains the following provision in at least ten-point boldface type:

NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amount paid by the debtor hereunder.

Section 501. (a) A seller may, in a retail installment contract, contract for and, if so contracted for, the holder thereof may charge, receive and collect a service charge [which shall not exceed the following rates multiplied by the number of months, including any fraction in excess of more than fifteen days as one month, elapsing] *measured for a period between the date of such contract and the due date of the last installment*[:

(a) *On the unpaid balance, two-thirds (2/3) of one percent (1%).*

(b) *A service charge shall not exceed the equivalent of fifteen percent (15%) simple interest per annum on the unpaid balance] and calculated for that period according to the actuarial method of computation or by application of the United States rule at a rate which does not exceed the equivalent of eighteen percent (18%) simple interest per annum.*

(b)¹ *Notwithstanding the rates provided for in this section, no issuer of a credit card primarily engaged as a seller or distributor of gasoline shall be permitted to charge, receive or collect a service charge in excess of fifteen percent (15%) simple interest per annum on unpaid balances.*

(c) *A minimum service charge of seventy cents (70¢) per month may be made for each month if the service charge so computed is less than that amount; such minimum service charge may be imposed for a minimum period of six months.*

Section 603. (a) *Notwithstanding the provisions of any contract to the contrary, any buyer may pay the contract in full at any time before maturity and in so paying it shall receive a refund credit thereon for such anticipation. In addition, pursuant to any contract provision so stating and subject to the restrictions of this act, as amended, a seller or holder may accelerate the balance due on an installment sales contract, but shall provide a refund credit thereon calculated as of the date of the acceleration. The amount of any such refund credit shall [represent at least as great a proportion of the service charge or, if the contract has been extended, deferred or refinanced, of the additional charge therefor, as the sum of the periodic monthly time balances under the schedule of installments in the contract, or, if the contract has been extended, deferred or refinanced, as so extended, deferred or refinanced.] be computed pursuant to the actuarial method. Actuarial method means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from the unpaid balance of the amount financed. Where the amount of*

¹“(b.1)” in original.

the credit for anticipation of payment is less than one dollar (\$1) no refund need be made. Where the earned service charge amounts to less than the minimum service charge, there may be retained an amount equal to the minimum service charge applicable.

(b) As used in this section "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge at the interest rate stated in the contract, as defined in Regulation Z, Appendix J, adopted under the Federal Truth in Lending Act.

Section 6. The act is amended by adding a section to read:

Section 605. (a) A judgment by confession shall not serve as the basis for a levy, execution or garnishment in any action by a seller, holder or assignee arising out of a retail installment sale, contract or account. To enforce a judgment entered by confession, plaintiff shall file an appropriate proceeding and proceed against defendant as in any original proceeding. A judgment entered by confession may be amended or modified by the court in a proceeding filed for the purpose of enforcing the judgment entered by confession; however, the priority of any lien based on the confessed judgment shall not be affected thereby. The parties to the enforcement proceeding shall have the same rights as parties in other original proceedings.

(b) Within sixty (60) days after payment of the full amount due on a judgment entered by confession, plaintiff shall satisfy the judgment and discontinue with the prejudice any proceeding brought for the purpose of enforcing a judgment entered by confession or satisfy any judgment entered in said proceeding. Plaintiff shall not require any act or payment by the defendant to cover the cost of satisfying the judgment. Any such confessed judgment not revived within one (1) year from the date on which the lien of said judgment has lapsed by operation of law shall be considered satisfied and may not thereafter be revived.

(c) The prevailing party in any action to remove, suspend or enforce such a judgment entered by confession shall be entitled to recover reasonable attorney's fees and costs as determined by the court.

Section 7. Section 904 and clause (d) of section 905 of the act are amended to read:

Section 904. Subject to the other provisions of this article the seller or holder of a retail installment account may charge, receive and collect the service charge authorized by this act. The service charge shall not exceed the following rates computed on the outstanding balances from month to month:

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

(b) A minimum service charge of seventy cents (70¢) per month may be made for each month if the service charge so computed is less than that amount; such minimum service charge may be imposed for a minimum period of six months.

(b.1) Notwithstanding the rate provided for in clause (a), no issuer of a credit card primarily engaged as a seller or distributor of gasoline shall be permitted to charge, receive or collect a service charge in excess of fifteen percent (15%) simple interest per annum on unpaid balances.

(c) 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 five dollars (\$5), provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

Section 905. The seller or holder of a retail installment account shall promptly provide the buyer with a statement as of the end of each monthly period (which need not be a calendar month) setting forth the following:

* * *

(d) The amount of the service charge[, and the following statement: **The service charge herein contained does not exceed the equivalent of fifteen percent (15%) simple interest per annum on the unpaid balance except that a minimum service charge of seventy cents (70¢) per month may be made.**]

* * *

Section 8. The act is amended by adding a section to read:

Section 912. Consistent with the provisions of this act, a seller or holder may increase the rate of the service charge by providing the buyer with a notice of the increase to the extent required and in the manner specified by the Truth in Lending Act, Title I of the Federal Consumer Credit Protection Act (Public Law 90-321) and the regulations issued pursuant thereto by the Board of Governors of the Federal Reserve System (Regulation Z) as such act and regulations may from time to time be amended. Any such increase shall be limited in its application to indebtedness incurred after the effective date of this act.

Section 9. Section 1002 of the act is repealed.

Section 10. The act is amended by adding a section to read:

Section 1102. A seller or holder may not accelerate the maturity of a retail installment contract, commence any legal action or repossess without legal process unless the buyer is in default and unless the seller or holder shall provide the buyer with notice, sent by certified mail, to the buyer's last known address or delivered personally to the residence of the buyer, informing the buyer (1) of his right to cure the default upon payment of the amount in default plus delinquency or deferral charges within twenty-one (21) days of the date of receipt of such notice, (2) the name, address and telephone number of the seller or holder, (3) total amount due, including amount of delinquency charges, (4) exact date by which the amount due must be paid, (5) name, address and telephone number of the person to whom payment must be made, and (6) other performance necessary to cure a default arising from other than nonpayment herein and the buyer is given the rights so specified. The seller or

holder shall not be required to provide such notice more than once in any twelve (12) month period. The act of curing a default restores to the buyer his rights under the retail installment contract as though no default had occurred.

Section 11. The amendment to section 303 shall apply to any contract executed more than 60 days from the date of final enactment of this amendatory act.

Section 12. The amendment to the rates in subsections (a) and (b) of section 501 and to subsection (a) of section 904 shall revert automatically to rates effective prior to this act unless specifically reenacted within three years of the effective date of this act.

Section 13. This act shall take effect immediately.

APPROVED—The 25th day of March, A. D. 1982.

DICK THORNBURGH