

No. 1989-57

AN ACT

HB 1299

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 rates, service charges, fees and contracts; requiring plain language; providing for retroactive application; and making repeals.

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

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

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

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(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 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.

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

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 measured for a period between the date of such contract and the due date of the last installment 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) 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.

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

Section 901. A retail installment account may be established by the seller upon the request of a buyer or prospective buyer. A statement setting forth the rates of service charge, which shall not exceed those authorized by this article, and describing the balance on which such service charge will be computed, shall be printed in type no smaller than eight point in every application form used by the seller and shall be stated to the applicant when such installment accounts are negotiated by telephone.

Subject to the other provisions of this article, a retail installment account may be established by a financing agency on behalf of one or more sellers 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.

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

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

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

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

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

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

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

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

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

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

Section 4. Section 904(a) of the act, reenacted February 26, 1988 (P.L.78, No.15), is reenacted 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-half percent (1 1/2%) per month.

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Section 5. Section 904.1 of the act is repealed.

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

Section 904.2. (a) Notwithstanding any other provision of this act, there shall be no limitation on the rate of the service charge imposed in connection with retail installment accounts issued to buyers domiciled outside Pennsylvania by a seller or holder of a retail installment account who is otherwise subject to this section: Provided further, That the rate of such service charge shall be set forth in writing and delivered to the buyer. In determining whether a buyer is domiciled in Pennsylvania, a seller or holder of a retail installment account may conclusively assume that such buyer is domiciled outside Pennsylvania if the seller or holder has not mailed any solicitation to the buyer at a Pennsylvania residential address, has not entered into a retail

installment account with the buyer pursuant to a personal meeting at an office of the seller or holder in Pennsylvania and does not mail the buyer monthly billing statements to a Pennsylvania residential address.

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

(c) This section shall expire three (3) years from [the effective date of this section unless specifically reenacted within three (3) years of the effective date of this section] *February 26, 1988, unless extended by statute.*

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

Section 904.3. The rates permitted under sections 501(a) and 904(a) shall automatically revert to the rates in effect on March 24, 1982, unless specifically reenacted [within three (3) years of the effective date of this section] *on or before February 26, 1991.*

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

Section 9. Section 12 of the act of March 25, 1982 (P.L.199, No.68), entitled "An act 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 defense, 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," is repealed.

Section 10. This act shall be retroactive to February 26, 1988, and shall apply to any action or proceeding pending, in any court of this Commonwealth, in any court of any other State, or in any Federal court, as of the effective date of this act.

Section 11. This act shall take effect immediately.

APPROVED—The 11th day of July, A. D. 1989.

ROBERT P. CASEY